
IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit

G. D. THOMPSON, as Receiver of the Twin Falls
National Bank, Twin Falls, Idaho,
Appellant,

vs.

COMMON SCHOOL DISTRICT NO. 54, in the
County of Twin Falls, State of Idaho,
Appellee.

G. D. THOMPSON, as Receiver of the Twin Falls
National Bank, Twin Falls, Idaho,
Appellant,

vs.

COMMON SCHOOL DISTRICTS NOS. 32, 36, 47,
59, and 62, in Twin Falls County, State of
Idaho,
Appellees.

Transcript of the Record

*Upon Appeal from the District Court of the United States,
for the District of Idaho, Southern Division.*

CAXTON PRINTERS. CALDWELL 43187

FILED

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF IDAHO,
SOUTHERN DIVISION

Common School Districts Nos. 32, 36, 47, 59,
and 62, in the County of Twin Falls,
State of Idaho,

Plaintiffs,

vs.

G. D. Thompson as Receiver of the Twin
Falls National Bank of Twin Falls,
Idaho.

No. 1787

BILL IN EQUITY
Filed October 31, 1932

For their several causes of action herein the
plaintiffs state:

COUNT I.

1. That the plaintiff Common School District
No. 32 is and at all of the times hereinafter stated
was a regularly organized and existing Common
School District in the County of Twin Falls in the
State of Idaho, and as such was at all times and
now is a body corporate, and by and in its name its
Trustees bring this action for its use and benefit.

2. That the Twin Falls National Bank was at all of the times hereinafter mentioned, up to the 23rd day of November, 1931, a National Banking Association, duly organized and existing under and pursuant to the laws of the United States.

3. That on the 23rd day of November, 1931, the said Twin Falls National Bank became insolvent and on said date ceased doing business as a bank and has not at any time since that date conducted the business for which it was organized.

4. That immediately after its failure Raymond H. Haase was duly appointed and became the lawfully acting receiver of the said Twin Falls National Bank for the purposes of its liquidation and continued to act in that capacity until after the 4th day of February, 1932; and as such receiver took into his possession all of the money and other assets of said bank on hand at the time it ceased doing business.

5. That subsequent to the 4th day of February, 1932, the defendant G. D. Thompson became and now is the lawfully acting receiver of the said Twin Falls National Bank in the place and stead of the said Raymond H. Haase.

6. That on the 18th day of January, 1929, the plaintiff, Common School District No. 32, had on hand and to its credit in the hands of the County Treasurer of Twin Falls County, Idaho, acting as

the treasurer of said School District, funds in excess of the sum of One Hundred and Sixty Dollars, which funds were subject to withdrawal only upon a warrant to and upon the treasurer of said county, acting as the treasurer of said School District, lawfully issued by the county auditor of said County upon the presentation and delivery to said auditor of the order or orders of said School District signed by the Clerk of the board of trustees of the School District and also signed by the chairman of the board, or, in the absence of the chairman, by the other members of the board.

7. That on the 18th day of January, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county, calling for the payment by said treasurer from the funds of said School District of the sum of One Hundred and Sixty Dollars, said warrant being numbered 27939; that on the 19th day of January, 1929, the said Bank presented said warrant to the county treasurer of said county and by virtue thereof received from said treasurer from the funds of said School District the said sum of One Hundred and Sixty Dollars.

8. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the payment thereof, nor at the time said Twin Falls

National Bank received the money thereon had said Bank sold or furnished to the said School District any supplies, materials or other property, or thing of value, neither had it furnished or rendered any services to or for the plaintiff, the said Common School District No. 32, and said School District was not at said times or at any time indebted to said Bank in the amount of \$160 or any other sum; that said warrant was not issued nor was the same paid to discharge in whole or in part any debt or obligation then due or owing to said Bank from said School District.

9. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said County Auditor any order or orders issued by the said School District No. 32, or in its behalf or by its authority, or any signed by the clerk of the board of trustees of said District or by its chairman or any of its members; that said school district has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by the said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of said school district or by the chairman of said board or by any of the other members thereof; that the warrant so obtained by the said Bank from the said county auditor was illegally and wrongfully issued and by said Bank

was illegally and wrongfully obtained and did not, either in whole or in part, constitute or become a legal charge or obligation against the said School District or its funds in the hands of its said treasurer, and was at all times and is void as against said School District.

10. That by causing the said County Auditor to issue to it the said warrant and by receiving the same and by presenting it to the treasurer of said county and of said School District and receiving payment thereof the said Twin Falls National Bank wrongfully obtained and took from the funds of said School District the said sum of \$160 and has not returned the same to said District or restored the same to the account of said School District with its treasurer.

COUNT II.

For a further cause of action herein and as an additional statement relating to the cause set forth in Count I hereof the plaintiffs state:

11. That the plaintiffs make each and all of paragraphs 1 to 5, inclusive, of the foregoing Count I a part of this Count to the same effect as though the allegations thereof were here repeated and again set out in full, and state further:

12. That on the 20th day of September, 1929, the plaintiff, Common School District No. 32, had

on hand and to its credit in the hands of the County Treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of Two Hundred and Twelve Dollars, in addition to the amount stated in Count I of this complaint, which funds were subject to withdrawal only upon a warrant to and upon the treasurer of said County acting as treasurer of said School District, lawfully issued by the County Auditor of said County, upon presentation and delivery to said Auditor of the order or orders of said School District signed by the Clerk of the board of trustees of said School District and also signed by the chairman of said board or, in the absence of the chairman, by the other members of the board.

13. That on the 20th day of September, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county calling for the payment by said treasurer from the funds of said School District of the sum of Two Hundred and Twelve Dollars, said warrant being numbered 28171; that on the 9th day of October, 1929, the said Bank presented said warrant to the county treasurer of said County and by virtue thereof received of said treasurer from the funds of said School District the said sum of Two Hundred and Twelve Dollars.

14. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the payment thereof, nor at the time the said Twin Falls National Bank received the money thereon had said Bank sold or furnished to the said School District any supplies, materials or other property, or thing of value, neither had it furnished or rendered any services to or for the said School District, and said District was not at said time or at any time indebted to said Bank in the sum of Two Hundred and Twelve Dollars or any other sum; that said warrant was not issued nor was the same paid to discharge in whole or in part any debt or obligation then due or owing to said Bank from said School District.

15. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District or in its behalf or by its authority, or any signed by the clerk of the board of trustees of said District or by its chairman or any of its members; that said School District has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by the said Bank; that no order for such warrant was at any time signed by the Clerk of the board of trustees of said School District or by the chairman of said board or by any of the other members

thereof; that the warrant so obtained by the said Bank from the county auditor was illegally and wrongfully issued and by said Bank was illegally and wrongfully obtained and did not, in whole or in part, constitute or become a legal charge or obligation against said School District or its funds in the hands of its treasurer, and was at all times and now is void as against said School District.

16. That by causing the said county auditor to issue to it the warrants mentioned in this Count and in Count I of this Bill and by receiving them and presenting them to the treasurer of said county and of said School District and receiving payment thereof the said Twin Falls National Bank wrongfully and without authority of law obtained and took from the funds of said School District the said sums of \$160 and \$212 and has not returned the same or any part thereof to said School District or restored the same or any part thereof to the account of said School District with its treasurer.

17. That the money so taken and held by the said Twin Falls National Bank did not at any time become and is not now the property of said Bank but has been at all times and now is held by said Bank wrongfully and in trust for the said School District and is now so held by the defendant, G. D. Thompson as receiver of said Bank, and that because of the matters and things set forth in this Bill

the said School District has as against said Bank and as against the receiver thereof, the said G. D. Thompson, a just and legal claim for the amount of money so taken, with interest from the several dates the same was taken by said Bank, and that the whole thereof is now held by said Bank and by its said receiver as a trust fund which the said School District is entitled to have enforced and allowed as a preferred claim against the money and other assets of said Bank which came into the hands of the receiver thereof and paid in preference to the general creditors of said Bank.

18. That for the purpose of recovering the amount of its funds so taken, the said Common School District No. 32 brought an action on the claims above set out against the said Twin Falls National Bank, in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County, being numbered 7859 in said court, in which action such proceedings were had as resulted in a judgment in favor of said School District and against the said Twin Falls National Bank, bearing date the 8th day of December, 1931, in the amount of \$435.77, besides the costs and disbursements of suit expended by the plaintiff in said action amounting to the sum of \$11.40, which judgment is wholly unpaid. A copy of said judgment is hereto attached, marked "Exhibit A," and made a part of this Bill.

19. That at all times from the time said warrants were paid to the said Twin Falls National Bank, as above set forth, up to and including the day when the said Bank became insolvent and ceased doing business, said Bank had on hand money in an amount greater than the amount of said judgment and more than sufficient to pay the claim of the said School District and held the same in trust for said School District.

20. That on the 4th day of February, 1932, the said Common School District No. 32 presented to the above named Raymond H. Haase, the then acting receiver of the said Twin Falls National Bank, for filing and attention a claim against said Bank and against him as receiver thereof, based on the judgment so entered in favor of said School District and against said Bank, demanding that the same be made and allowed as a preferred claim and ordered to be paid as such in preference to the claims of the general creditors of said Bank, but that such demand has been refused and the said Raymond H. Haase and the said G. D. Thompson, as his successor in said trust, have both refused and still refuse to classify and allow the claim of said School District as a preferred claim in accordance with such demand.

COUNT III.

For a further cause of action against the defendants the plaintiffs state:

1. That the plaintiff Common School District No. 36 is and at all of the times hereinafter stated was a regularly organized and existing Common School District in the County of Twin Falls in the State of Idaho, and as such was at all of said times and now is a body corporate, and by and in its name its Trustees bring this action for its use and benefit.

2. That the Twin Falls National Bank was at all of the times hereinafter mentioned, up to the 23rd day of November, 1931, a National Banking Association, duly organized and existing under and pursuant to the laws of the United States.

3. That on the 23rd day of November, 1931, the said Twin Falls National Bank become insolvent and on said date ceased doing business as a bank, and has not at any time since that date conducted the business for which it was organized.

4. That immediately after its failure Raymond H. Haase was duly appointed and became the lawfully acting receiver of the said Twin Falls National Bank for the purposes of its liquidation, and continued to act in that capacity until after the 4th day of February, 1932; and as such receiver took into his possession all of the money and other assets of said bank on hand at the time it ceased doing business.

5. That subsequent to the 4th day of February, 1932, the defendant G. D. Thompson became and

now is the lawfully acting receiver of the said Twin Falls National Bank in the place and stead of the said Raymond H. Haase.

6. That on the 11th day of September, 1929, the plaintiff Common School District No. 36 had on hand and to its credit in the hands of the County Treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of One Hundred and Sixty Dollars, which funds were subject to withdrawal only upon a warrant to and upon the treasurer of said county, acting as the treasurer of said School District, lawfully issued by the county auditor of said county upon the presentation and delivery to said auditor of the order or orders of said School District signed by the clerk of the board of trustees of the School District and also signed by the chairman of the board, or, in his absence, by the other members of the board.

7. That on the 11th day of September, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county calling for the payment by said treasurer from the funds of said School District of the sum of One Hundred and Sixty Dollars, said warrant being numbered 28144; that on the 20th day of September, 1929, the said Bank presented said war-

rant to the county treasurer of said county and by virtue thereof received from said treasurer of the funds of said School District the said sum of \$160.

8. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the payment thereof, nor at the time said Twin Falls National Bank received the money thereon, had said Bank sold or furnished to the said School District any supplies, materials or other property or thing of value, neither had it furnished or rendered any services to or for the said School District, and said School District was not at said times or at any time indebted to said Bank in the sum of \$160 or any other amount; that said warrant was not issued nor was the same paid to discharge in whole or in any part any debt or obligation then due or owing to said Bank from said School District.

9. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District or in its behalf or by its authority, or any signed by the clerk of the board of trustees of said District or by its chairman or any of its members; that said School District has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by the said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of said School Dis-

trict or by the chairman of said board or by any of the other members thereof; that the warrant so obtained by the said Bank from the county auditor of said county was illegally and wrongfully issued and by said Bank was illegally and wrongfully obtained and did not, either in whole or in part, constitute or become a legal charge or obligation against said School District or its funds in the hands of its treasurer, and was at all times and now is void as against said School District.

10. That by causing the said county auditor to issue to it the said warrant and by receiving the same and presenting it to the treasurer of said county and of said School District and receiving payment thereof the said Twin Falls National Bank wrongfully obtained and took from the funds of said School District the said sum of \$160 and has not returned the same to said District or restored it or any part thereof to the account of the District with its treasurer.

11. That the money so taken and held by the said Twin Falls National Bank did not at any time become and is not now the property of said Bank but has been at all times and is now held by said Bank wrongfully and in trust for said School District and is now so held by the defendant G. D. Thompson as receiver of said Bank, and that because of the matters set forth in this Bill the said School District has as against said Bank and as against the receiver

thereof, the defendant G. D. Thompson, a just and legal claim for the amount of money so taken, with interest from the time of the taking at the rate of seven per cent per annum; that the whole thereof is now held by said Bank and its said receiver as a trust fund for the use and benefit of said School District and that said School District has as against said fund a just and legal claim which it is entitled to have made preferred and paid in preference to the claims of the general creditors of said Bank.

12. That at all times from the time said warrant was paid, as above set forth, up to and including the day when the said Bank became insolvent and ceased doing business and when the receiver thereof took possession of its money and other assets, said Bank had on hand money in an amount greater than the amount of the claim of said School District and held sufficient thereof as a trust fund in favor of said School District to pay its claim in full.

13. That for the purpose of recovering the amount of its funds so taken, the said School District brought an action on its claim above set out against the said Twin Falls National Bank in the District Court of the Eleventh Judicial District of the State of Idaho in and for Twin Falls County, being numbered 7874 in said court, in which action such proceedings were had as resulted in a judgment in favor of said School District and against the said Twin Falls National Bank, bearing date the

8th day of December, 1931, in the amount of \$183.49 besides the costs and disbursements of suit paid by the plaintiff in said action, amounting to \$11.40, which judgment is wholly unpaid. A copy of said judgment is hereto attached, marked Exhibit B, and made a part of this Bill.

14. That on the 4th day of February, 1932, the said Common School District No. 36 presented to the above named Raymond H. Haase, the then acting receiver of the said Twin Falls National Bank, for filing and attention, a claim against said Bank and against him as receiver thereof, based on the judgment so entered in favor of said School District and against said Bank, demanding that the same be made and allowed as a preferred claim and ordered to be paid as such in preference to the claims of the general creditors of said Bank, but that such demand has been refused and the said Raymond H. Haase and the said G. D. Thompson, as the successor in said trust, have both refused and still refuse to classify and allow said claim as a preferred claim in accordance with such demand.

COUNT IV.

For a further cause of action against the defendant the plaintiffs state:

1. That the plaintiff Common School District No. 47 is and at all of the times hereinafter stated,

was a regularly organized and existing Common School District in the County of Twin Falls, State of Idaho, and as such was at all of said times and now is a body corporate, and by and in its name its trustees bring this action for its use and benefit.

2. That the Twin Falls National Bank was at all of the times hereinafter mentioned, up to the 23rd day of November, 1931, a National Banking Association, duly organized and existing under and pursuant to the laws of the United States.

3. That on the 23rd day of November, 1931, the said Twin Falls National Bank became insolvent and on said date ceased doing business as a bank, and has not at any time since then conducted the business for which it was organized.

4. That immediately after its failure Raymond H. Haase was duly appointed and became the lawfully acting receiver of said Twin Falls National Bank for the purposes of its liquidation, and continued to act in that capacity until after the 4th day of February, 1932; and as such receiver took into his possession all of the money and other assets of said bank on hand at the time it ceased doing business.

5. That subsequent to the 4th day of February, 1932, the defendant G. D. Thompson became and now is the lawfully acting receiver of the said Twin

Falls National Bank in the place and stead of the said Raymond H. Haase.

6. That on the 28th day of May, 1929, the plaintiff Common School District No. 47 had on hand and to its credit in the hands of the county treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of Two Hundred and Twenty-five Dollars, which funds were subject to withdrawal only upon a warrant to and upon said treasurer, lawfully issued by the county auditor of said county upon the presentation and delivery to said auditor of the order or orders of said School District signed by the clerk of the board of trustees of the District and also signed by the chairman of the board, or, in his absence, by the other members.

7. That on the 28th day of May, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County, to issue and deliver to it a warrant on the county treasurer of said county calling for the payment by said treasurer from the funds of said School District, of the sum of \$225, said warrant being numbered 28062; that on the first day of June, 1929, said Bank presented said warrant to said treasurer and by virtue thereof received from said treasurer of the funds of said School District the said sum of \$225.

8. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the pay-

ment thereof, nor at the time the said Twin Falls National Bank received the money thereon, had said Bank sold or furnished to said School District any supplies, materials or other property or thing of value, neither had it furnished or rendered any services to or for said District, and said District was not at said times or at any time indebted to said Bank in the sum of \$225 or any other amount; that said warrant was not issued nor was the same paid to discharge any debt or obligation then due or owing to said Bank from the School District.

9. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District or in its behalf or by its authority, or any signed by the clerk of the board of trustees of the District or by its chairman or any of its members; that said School District has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of said District or by the chairman of said board or by any of its other members; that the warrant so obtained by said Bank from the county auditor of said county was illegally and wrongfully issued and by said bank was wrongfully and illegally obtained and did not, either in whole or in part constitute or be-

come a legal charge or obligation against said School District or its funds in the hands of its treasurer, and was at all times and now is void as against said School District.

10. That by causing the said county auditor to issue to it the said warrant and by receiving the same and presenting it to the treasurer of said county and of said School District and receiving payment thereof the said Twin Falls National Bank wrongfully obtained and took from the funds of said School District the said sum of \$225 and has not returned the same to said District or restored it or any part thereof to the account of the District with its treasurer.

11. That the money so taken and held by the said Twin Falls National Bank did not at any time become the property of said Bank but has been at all times and is now by said Bank held wrongfully and in trust for said School District and is now so held by the defendant G. D. Thompson as receiver of said Bank, and that because of the matters set forth in this Bill the said School District has as against said Bank and against the receiver thereof, the defendant G. D. Thompson, a just, legal and equitable claim for the amount of money so taken, with interest from the time of taking at seven per cent per annum; that the whole thereof is now held by the Bank and its said receiver as a trust fund for the use and benefit of said School District

and that said District has as against said fund a just, legal and equitable claim which it is entitled to have made preferred and paid in preference to the claims of the general creditors of said Bank.

12. That at all times from the time said warrant was paid, as above set forth, up to and including the day when said Bank became insolvent and ceased doing business and when the receiver thereof took possession of its money and other assets, said Bank had on hand money in an amount greater than the amount of the claim of said School District and held sufficient thereof as a trust fund in favor of said District to pay its claim in full.

13. That for the purpose of recovering the amount of its funds so taken, the said School District brought an action on its claim as above set forth against the said Twin Falls National Bank in the District Court of the Eleventh Judicial District of Idaho, in and for Twin Falls County, being numbered 7913 in said court, in which action such proceedings were had as resulted in a judgment in favor of said School District and against the said Twin Falls National Bank, bearing date the 8th day of December, 1931, in the amount of \$263.93, besides the costs and disbursements of suit paid by the plaintiff in the action amounting to \$11.40, which judgment is wholly unpaid. A copy of said judgment is hereto attached marked Exhibit C and made a part of this Bill.

14. That on the 4th day of February, 1932, the said Common School District No. 47 presented to the above named Raymond H. Haase, the then acting receiver of the said Twin Falls National Bank, for filing and attention, a claim against said Bank and against him as the receiver thereof, based on the judgment so entered in said action, demanding that the same be made and allowed as a preferred claim and ordered to be paid as such in preference to the claims of the general creditors of said Bank, but that such demand has been refused and the said Raymond H. Haase as such receiver, and the defendant G. D. Thompson as the successor in said trust, have both refused and still refuse to classify and allow said claim as a preferred claim in accordance with such demand.

COUNT V.

For a further cause of action against the defendant the plaintiffs state:

1. That the plaintiff Common School District No. 59 is and at all of the times hereinafter stated was a regularly organized and existing Common School District in the County of Twin Falls, State of Idaho, and as such was at all of said times and now is a body corporate and by and in its name its Trustees bring this action for its use and benefit.

2. That the Twin Falls National Bank was at all of the times hereinafter mentioned, up to the 23rd

day of November, 1931, a National Banking Association, duly organized and existing under and pursuant to the laws of the United States.

3. That on the 23rd day of November, 1931, the said Twin Falls National Bank became insolvent and on said date ceased doing business as a bank and has not at any time since that date conducted the business for which it was organized.

4. That immediately after its failure Raymond H. Haase was duly appointed and became the lawfully acting receiver of the said Twin Falls National Bank for the purposes of its liquidation, and continued to act in that capacity until after the fourth day of February, 1932; and as such receiver took into his possession all of the money and other assets of said Bank on hand at the time it ceased doing business.

5. That subsequent to the 4th day of February, 1932, the defendant G. D. Thompson became and now is the lawfully acting receiver of said Bank in the place and stead of the said Raymond H. Haase.

6. That on the 7th day of May, 1929, the plaintiff, Common School District No. 59, had on hand and to its credit in the hands of the county treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of Two Hundred and Twenty-five Dol-

lars, which funds were subject to withdrawal only upon a warrant to and upon the treasurer of said county, acting as treasurer of said District, lawfully issued by the county auditor of said county upon presentation and delivery to said auditor of the order or orders of said District signed by the clerk of the board of trustees of the School District and also signed by the chairman of said board, or, in his absence, by the other members of the board.

7. That on the 7th day of May, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county calling for the payment by said treasurer from the funds of the said School District of the sum of \$225, said warrant being numbered 28040; that on the 15th day of May, 1929, said Bank presented said warrant to the county treasurer of said county and by virtue thereof received from said treasurer of the funds of the said School District the said sum of \$225.

8. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the payment thereof nor at the time said Bank received the money thereon, had said Bank sold or furnished to the said School District any supplies, materials or other property or thing of value, neither had it furnished or rendered any services to or for said District, and said District was not at

said times or at any time indebted to said Bank in the sum of \$225 or any other amount; that said warrant was not issued nor was the same paid to discharge any debt or obligation then due or owing to said Bank from the said School District.

9. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District or in its behalf or by its authority, or any signed by the clerk of the board of trustees of the District or by its chairman or any of its members; that said School District has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of the District or by the chairman of said board or by any of its other members; that the warrant so obtained by said Bank from the county auditor of said county was illegally and wrongfully issued and by said Bank wrongfully and illegally obtained and did not in any part constitute or become a legal charge against or obligation of said School District or against its funds in the hands of its treasurer, and was at all times and now is void as against said School District.

10. That by causing the said county auditor to issue to it the said warrant and by receiving the

same and presenting it to the treasurer of said county and of said School District and receiving payment thereof the said Twin Falls National Bank wrongfully obtained and took from the funds of said District the said sum of \$225 and has not returned the same to said District or restored any part thereof to the account of the District with its treasurer.

11. That the money so taken and held by the said Twin Falls National Bank did not at any time become the property of said Bank but has been at all times and now is by said bank held wrongfully and in trust for said School District and is now so held by the defendant G. D. Thompson as receiver of said Bank, and that because of the matters set forth in this Bill the said School District has as against said Bank and against the receiver thereof a just, legal and equitable claim for the amount of money so taken, with interest from the time of taking at seven per cent per annum; that the whole thereof is now held by the Bank and by its receiver as a trust fund for the use and benefit of said School District and that said District has as against said fund a just, legal and equitable claim which it is entitled to have made preferred and paid in preference to the claims of the general creditors of said Bank.

12. That at all times from the time said warrant was paid, as above set forth, up to and including the

day when said Bank became insolvent and ceased doing business and when the receiver took possession of its money and other assets, said Bank had on hand money in an amount greater than the amount of the claim of said School District and held sufficient thereof as a trust fund in favor of said District to pay its claim in full.

13. That for the purpose of recovering the amount of its funds so taken the said School District brought an action on its claim as above set forth against the said Twin Falls National Bank in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County, being numbered 7928 in said court, in which action such proceedings were had as resulted in a judgment in favor of said School District and against the said Bank, bearing date the 8th day of December, 1931, in the amount of \$265.69, besides the costs and disbursements of suit expended by the plaintiff in the action, amounting to the sum of \$11.40, which judgment is wholly unpaid. A copy of said judgment is hereto attached, marked Exhibit D and made a part of this Bill.

14. That on the 4th day of February, 1932, the said Common School District No. 59 presented to the said Raymond H. Haase the then acting receiver of the said Twin Falls National Bank, for filing and attention, a claim against said Bank and against said receiver, based on the judgment so entered in

said action, demanding that the same be made and allowed as a preferred claim and ordered to be paid as such in preference to the claims of the general creditors of said Bank, but that such demand was refused and the said Raymond H. Haase as such receiver, and the defendant G. D. Thompson as the successor in said trust, have both refused and still refuse to classify and allow said claim as a preferred claim in accordance with such demand.

COUNT VI.

For a further cause of action against the defendant the plaintiffs state:

1. That the plaintiff, Common School District No. 62 is and at all of the times hereinafter stated was a regularly organized and existing Common School District in the County of Twin Falls, State of Idaho, and as such was at all of said times and now is a body corporate, and by and in its name its Trustees bring this action for its use and benefit.

2. That the Twin Falls National Bank was at all of the times hereinafter mentioned, up to the 23rd day of November, 1931, a National Banking Association, duly organized and existing under and pursuant to the laws of the United States.

3. That on the 23rd day of November, 1931, the said Twin Falls National Bank became insolvent

and on said date ceased doing business as a bank and has not at any time since that date conducted the business for which it was organized.

4. That immediately after its failure Raymond H. Haase was duly appointed and became the lawfully acting receiver of said Bank for the purposes of its liquidation and continued to act in that capacity until after the 4th day of February, 1932; and as such receiver took into his possession all of the money and other assets of said Bank on hand at the time it ceased doing business.

5. That subsequent to the 4th day of February, 1932, the defendant G. D. Thompson became and now is the lawfully acting receiver of the said Twin Falls National Bank in the place and stead of the said Raymond H. Haase.

6. That on the 8th day of January, 1929, the plaintiff, Common School District No. 62, had on hand and to its credit in the hands of the county treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of One Hundred Dollars, which funds were subject to withdrawal only upon a warrant to and upon the treasurer of said county acting as the treasurer of said School District, lawfully issued by the county auditor of said county upon the presentation and delivery to said county auditor of the order or orders of said School Dis-

trict signed by the clerk of the board of trustees of said District and also signed by the chairman of said board, or, in his absence, by the other members of the board.

7. That on the 8th day of January, 1929, the said Twin Falls National Bank caused the county auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county, calling for the payment by said treasurer from the funds of said School District of the sum of One Hundred Dollars, said warrant being numbered 27937; that on the 19th day of January, 1929, said Bank presented said warrant to said treasurer and by virtue and the use thereof received from said treasurer from the funds of said School District the sum of One Hundred Dollars.

8. That neither prior to nor at the time of the issuing of said warrant, nor at the time of the payment thereof, nor at the time the said Bank received the money thereon had the said Bank sold or furnished to the said School District any supplies, materials or other property or thing of value, neither had it furnished or rendered any services to or for said School District, and said District was not at said times or at any time indebted to said Bank in the sum of \$100 or any other amount; that said warrant was not issued nor was the same paid to discharge any debt or obligation then due or owing from said District to said Bank.

9. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District No. 62 or in its behalf or by its authority, or any signed by the clerk of the board of trustees of said District or by its chairman or any of the members of said board; that said School District has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of said District or by the chairman of said board or by any of the other members; that the warrant so obtained by said Bank from the county auditor was illegally and wrongfully issued and by said Bank was illegally and wrongfully obtained and did not in any part constitute or become a legal charge against or obligation of said School District or its funds in the hands of its said treasurer, and was at all times and now is void as against said District.

10. That by causing said county auditor to issue to it the said warrant and by receiving the same and presenting it to the treasurer of said District and receiving payment thereof the said Bank wrongfully obtained and took from the funds of said School District the said sum of \$100 and has not returned the same to said District or restored any

portion thereof to the account of said District with its treasurer.

COUNT VII.

For a further cause of action herein and as an additional statement relating to the cause of action set up in Count VI hereof the plaintiffs state:

11. That the plaintiffs make each and all of the paragraphs 1 to 5, inclusive, of the foregoing Count VI a part of this Count to the same effect as though the allegations thereof were here repeated and again set out in full, and state further:

12. That on the 25th day of March, 1929, the plaintiff, Common School District No. 62, had on hand and to its credit in the hands of the county treasurer of Twin Falls County, Idaho, acting as the treasurer of said School District, funds in excess of the sum of \$240, in addition to the amount stated in Count VI of this Bill, which funds were subject to withdrawal only upon a warrant to and upon said treasurer, lawfully issued by the county auditor of said county, upon presentation and delivery to him of the order or orders of said School District signed by the clerk of the board of trustees of the District and signed also by the chairman of said board, or, in his absence, by the other members thereof.

13. That on the 25th day of March, 1929, the said Twin Falls National Bank caused the county

auditor of said Twin Falls County to issue and deliver to it a warrant on the county treasurer of said county calling for the payment by said treasurer from the funds of said School District of the sum of \$240, said warrant being numbered 28006; that on the 28th day of March, 1929, said Bank presented to said treasurer said warrant and by virtue and the use thereof received of said treasurer from the funds of said School District the said sum of \$240.

14. That neither prior to nor at the time of the issuing of said warrant nor at the time of the payment thereof nor at the time said Bank received the money thereon had said Bank sold or furnished to said School District any supplies, materials or other property or thing of value, neither had it furnished or rendered any services to or for said District, and said School District was not at said times or at any time indebted to said Bank in the sum of \$240 or any other amount; that said warrant was not issued nor was the same paid to discharge any debt or obligation then due or owing said Bank from the said District.

15. That said warrant was by the said Twin Falls National Bank so obtained without presenting or delivering to said county auditor any order or orders issued by said School District or in its behalf or by its authority or any signed by the clerk of the board of trustees of the District or by its chairman or by any of its members; that said District

has not and had not at any time issued or caused to be issued or authorized the issuance of any order or orders for the warrant so obtained by said Bank; that no order for such warrant was at any time signed by the clerk of the board of trustees of said District or by the chairman of said board or any of the other members thereof; that the warrant so obtained by the Bank from the county auditor was illegally and wrongfully issued and by said Bank was illegally and wrongfully obtained and did not constitute or become a legal charge against or obligation of said School District or any of its funds, and that the same is now and at all times was void as against said School District.

16. That by causing the said county auditor to issue to it the warrants mentioned in this Count and in Count VI of this Bill and by receiving them and presenting them to said treasurer and receiving payment thereof the said Twin Falls National Bank wrongfully and without authority of law obtained and took from the funds of said School District the said sums of \$100 and \$240 and has not returned any part thereof to said District or restored any portion to the account of the District with its treasurer.

17. That the money so taken and held by the said Twin Falls National Bank did not at any time become and is not now the property of said Bank but has been at all times and now is held by said

Bank wrongfully and in trust for said School District and is now so held by the defendant G. D. Thompson as receiver of said Bank, and that by reason of the matters set forth in this Bill, and particularly in this Count and in Count VI, said School District has as against said Bank and against the defendant as receiver thereof, a just, legal and equitable claim and demand for the amounts of money so taken, with interest, and that the whole thereof is now held by said Bank and its said receiver as a trust fund for said School District from which said District is entitled to have its claims paid in full in preference to the claims of the general creditors of said Bank.

18. That for the purpose of recovering the amount of its funds so taken, said Common School District No. 62 brought an action on the claims set forth in this Count and in Count VI hereof against the said Twin Falls National Bank in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County, being numbered 7876 in said court, in which action such proceedings were had as resulted in a judgment in favor of said School District and against said Bank, bearing date the 8th day of December, 1931, in the amount of \$404.49, besides the costs and disbursements of suit paid by the plaintiff in the action, amounting to \$11.40, which judgment is wholly un-

paid. A copy of said judgment is hereto attached, marked Exhibit E, and made a part of this Bill.

19. That at all times from the times said warrants were paid, as above set forth, up to and including the day when said Bank became insolvent and ceased doing business and when the receiver took possession of its money and other assets, said Bank had on hand money in an amount greater than the amount of the claims of said School District and held sufficient thereof as a trust fund in favor of the School District to pay its claims in full, which fund was taken possession of by said receiver.

20. That on the 4th day of February, 1932, said Common School District No. 62 presented to the said Raymond H. Haase, the then acting receiver of the said Twin Falls National Bank, for filing and attention, a claim against said Bank and against the said receiver, based on and evidenced by said judgment so entered in said action, demanding that the same be made and allowed as a preferred claim and ordered to be paid as such in preference to the claims of the general creditors of the Bank, but that such demand was refused and the said Raymond H. Haase as such receiver and the said G. D. Thompson as the successor in said trust, have both refused and still refuse to classify and allow said claim as preferred in accordance with such demand.

Wherefore the plaintiffs pray that judgment and decree be entered herein finding, determining and

decreeing that the several claims of the respective plaintiffs as set forth in this bill and as evidenced by the allegations and exhibits presented by them be established and declared to be preferred claims against the money and assets of the Twin Falls National Bank that came into the possession of Raymond H. Haase as receiver of said Bank, and ordering and directing the defendant G. D. Thompson as receiver of said Bank to make payments of said several claims prior and in preference to the claims of the general creditors of said Bank.

Plaintiffs further pray that they be given such other, further and different relief as they may be entitled to in the premises.

SWEELEY & SWEELEY,
Attorneys for Plaintiffs, re-
siding at Twin Falls, Idaho.

State of Idaho,)
County of Twin Falls,) ss.

M. J. Sweeley, being sworn, states on oath as follows:

That he is one of the attorneys for the plaintiffs in the above entitled action and was one of the attorneys for the several plaintiffs in the actions brought by them respectively, in which actions judgments were entered in their favor as set forth in the foregoing bill;

That he is personally familiar with the public records on which the claims of the plaintiffs are founded and has better knowledge of them than has any of the officers of the plaintiffs; that he has prepared the foregoing bill and knows its contents and that the allegations therein set forth are true as he verily believes.

M. J. SWEELEY,

Subscribed and sworn to before me this 21st day of September, 1932.

Notary Public.

(Service acknowledged)

EXHIBIT A.

In the District Court of the Eleventh Judicial District of the State of Idaho, in and for the County of Twin Falls.

Common School District No. 32, in the County of Twin Falls, State of Idaho,

Plaintiff,

vs.

Twin Falls National Bank, a corporation,

Defendant.

Case No. 7859

ORDER AND JUDGMENT

Be it remembered that heretofore, to-wit, on the 12th day of November, 1931, this cause came on for hearing on the motion of defendant for an order relieving it from that portion of the stipulation entered into by the parties to the action on the 12th day of February, 1931, which is in words and figures as follows:

“It is further stipulated and agreed that in the event the judgments so entered in cases No. 7806 and 7805, respectively, are both affirmed by the Supreme Court then judgment may, upon motion for counsel for the plaintiff herein, be entered in these actions in favor of the plaintiff and against the defendant as prayed in plaintiff’s complaint,” and on the motion of plaintiff for judgment as prayed in its complaint herein, at which time the plaintiff appeared by Sweeley & Sweeley, its attorneys, and the defendant appeared by James R. Bothwell and W. Orr Chapman, its attorneys.

The court thereupon heard arguments of counsel on said motions and at their close took said matters under advisement.

Now on this 8th day of December, 1931, the court, having considered said motions and be-

ing fully advised in the premises finds that on the 12th day of February, 1931, the parties to this action, acting by their attorneys of record, signed their written stipulation whereby it was by them agreed that in the event judgments which had been entered by this court in cases numbered 7806 and 7805, respectively, in this court, were both affirmed by the Supreme Court of the State of Idaho, to which court appeals in said cases had been taken, then judgment may, upon motion of counsel for the plaintiff herein be entered in favor of the plaintiff and against the defendant as prayed in plaintiff's complaint; that the judgments in both of said cases numbered 7806 and 7805, respectively, have been affirmed by the Supreme Court of the State of Idaho.

The court further finds that the showing made by defendant is not sufficient to justify the relieving of defendant from said stipulation and that the motion of plaintiff for judgment as prayed in its complaint should be granted.

It is therefore by the court ordered that the motion of defendant asking that it be relieved from said stipulation be and the same is by the court denied, and that the motion of plaintiff for judgment in accordance with its complaint herein be and the same is granted.

It is therefore by the court ordered and adjudged that the plaintiff have and recover of and from the defendant on plaintiff's first cause of action set out in its complaint the sum of One Hundred and Sixty Dollars, with interest thereon at the rate of seven per cent per annum from the 18th day of January, 1929, amounting at this time to the sum of One Hundred, Ninety-one and $\frac{73}{100}$ Dollars, and on plaintiff's second cause of action set out in its complaint the sum of Two Hundred and Twelve Dollars with interest thereon from the 20th day of September, 1929, at the rate of seven per cent per annum, amounting at this time to the sum of \$244.04, making, in the aggregate, on both counts, the sum of \$435.77, besides plaintiff's costs and disbursements of suit, taxed at \$11.40, and that execution issue therefor.

By the Court:

(signed) WM. A. BABCOCK,
Judge District Court.

EXHIBIT B.

In the District Court of the Eleventh Judicial
District of the State of Idaho, in and for
the County of Twin Falls.

Common School District No. 36, in the
County of Twin Falls, State of
Idaho,

Plaintiff,

vs.

Twin Falls National Bank, a corporation,
Defendant.

Case No. 7874

ORDER AND JUDGMENT

Be it remembered that heretofore, to-wit, on the 12th day of November, 1931, this cause came on for hearing on the motion of defendant for an order relieving it from that portion of the stipulation entered into by the parties to the action on the 12th day of February, 1931, which is in words and figures as follows:

“It is further stipulated and agreed that in the event the judgments so entered in cases No. 7806 and 7805, respectively, are both affirmed by the Supreme Court, then judgment may, upon motion for counsel for the plaintiff herein, be entered in these actions in favor of the plaintiff and against the defendant as prayed in plaintiff’s complaint,” and on the motion of plaintiff for judgment as prayed in its complaint herein, at which time the plaintiff appeared by Sweeley & Sweeley, its attorneys,

and the defendant appeared by James R. Bothwell and W. Orr Chapman, its attorneys; whereupon the court heard arguments of counsel on said motions and at their close took said matters under advisement.

Now on this 8th day of December, 1931, the court having considered said motions and being fully advised in the premises finds that on the 12th day of February, 1931, the parties to this action, acting by their attorneys of record, signed their written stipulation whereby it was by them agreed that in the event the judgments which had been entered by this court in cases numbered 7806 and 7805, respectively, in this court, were both affirmed by the Supreme Court of the State of Idaho, to which court appeals in said cases had been taken, then judgment may, upon motion of counsel for the plaintiff herein, be entered in favor of the plaintiff and against the defendant as prayed in plaintiff's complaint; that the judgments in both of said cases numbered 7806 and 7805, respectively, have been affirmed by the Supreme Court of the State of Idaho.

The court further finds that the showing made by defendant is not sufficient to justify the relieving of defendant from said stipulation, that the motion therefor should be denied and that the motion of plaintiff for judgment

as prayed in its complaint should be granted. It is therefore ordered that the motion of defendant asking that it be relieved from said stipulation be and the same is by the court denied, and that the motion of plaintiff for judgment in accordance with the prayer of its complaint herein be and the same is granted.

It is by the court further ordered and adjudged that the plaintiff have and recover of and from the defendant on the cause of action set out in the complaint in this action the sum of One Hundred and Sixty Dollars, with interest thereon at the rate of seven per cent per annum from the 11th day of September, 1929, amounting at this time to the sum of \$183.49, besides the costs and disbursements of suit taxed at \$11.40.

By the Court:

(signed) WM. A. BABCOCK,
Judge District Court.

EXHIBIT C.

In the District Court of the Eleventh Judicial
District of the State of Idaho, in and for
the County of Twin Falls.

Common School District No. 47, in the
County of Twin Falls, State of
Idaho,

Plaintiff,

vs.

Twin Falls National Bank, a corporation,

Defendant.

Case No. 7913

ORDER AND JUDGMENT

Be it remembered that heretofore, to-wit, on the 12th day of November, 1931, this cause came on for hearing on the motion of defendant for an order relieving it from that portion of the stipulation entered into by the parties to the action on the 12th day of February, 1931, which is in words and figures as follows:

“It is further stipulated and agreed that in the event the judgments so entered in cases No. 7806 and 7805, respectively, are both affirmed by the Supreme Court, then judgment may, upon motion for counsel for the plaintiff herein, be entered in these actions in favor of the plaintiff and against the defendant as prayed in plaintiff’s complaint,” and on the motion of plaintiff for judgment as prayed in its complaint herein, at which time the plaintiff appeared by Sweeley & Sweeley, its attorneys,

and the defendant appeared by James R. Bothwell and W. Orr Chapman, its attorneys; whereupon the court heard arguments of counsel on said motions and at their close took said matters under advisement.

Now on this 8th day of December, 1931, the court having considered said motions and being fully advised in the premises finds that on the 12th day of February, 1931, the parties to this action, acting by their attorneys of record, signed their written stipulation whereby it was by them agreed that in the event the judgments which had been entered by this court in cases numbered 7806 and 7805, respectively, in this court, were both affirmed by the Supreme Court of the State of Idaho, to which court appeals in said cases had been taken, then judgment may, upon motion of counsel for the plaintiff herein, be entered in favor of the plaintiff and against the defendant as prayed in plaintiff's complaint; that the judgments in both of said cases numbered 7806 and 7805, respectively, have been affirmed by the Supreme Court of the State of Idaho.

The court further finds that the showing made by defendant is not sufficient to justify the relieving of defendant from said stipulation, that the motion therefor should be denied and that the motion of plaintiff for judgment

as prayed in its complaint should be granted. It is therefore ordered that the motion of defendant asking that it be relieved from said stipulation be and the same is by the court denied, and that the motion of plaintiff for judgment in accordance with the prayer of its complaint herein be and the same is granted.

It is by the court further ordered and adjudged that the plaintiff have and recover of and from the defendant on the cause of action set out in the complaint in this action the sum of Two Hundred and Twenty-five Dollars, with interest thereon at the rate of seven per cent per annum from the 28th day of May, 1929, amounting at this time to the sum of \$263.93, besides the costs and disbursements of suit taxed at \$11.40.

By the Court:

(signed) WM. A. BABCOCK,
Judge District Court.

EXHIBIT D.

In the District Court of the Eleventh Judicial
District of the State of Idaho, in and for
the County of Twin Falls.

Common School District No. 59, in the
County of Twin Falls, State of
Idaho,

Plaintiff,

vs.

Twin Falls National Bank, a corporation,
Defendant.

Case No. 7928

ORDER AND JUDGMENT

Be it remembered that heretofore, to-wit, on the 12th day of November, 1931, this cause came on for hearing on the motion of defendant for an order relieving it from that portion of the stipulation entered into by the parties to the action on the 12th day of February, 1931, which is in words and figures as follows:

“It is further stipulated and agreed that in the event the judgments so entered in cases No. 7806 and 7805 respectively are both affirmed by the Supreme Court, then judgment may, upon motion for counsel for the plaintiff herein, be entered in these actions in favor of the plaintiff and against the defendant as prayed in plaintiff’s complaint,” and on the motion of plaintiff for judgment as prayed in its complaint herein, at which time the plaintiff appeared by Sweeley & Sweeley, its attorneys,

and the defendant appeared by James R. Bothwell and W. Orr Chapman, its attorneys; whereupon the court heard arguments of counsel on said actions and at their close took said matters under advisement.

Now on this 8th day of December, 1931, the court having considered said motions and being fully advised in the premises finds that on the 12th day of February, 1931, the parties to this action, acting by their attorneys of record, signed their written stipulation whereby it was by them agreed that in the event the judgments which had been entered by this court in cases numbered 7806 and 7805, respectively, in this court, were both affirmed by the Supreme Court of the State of Idaho, to which court appeals in said cases had been taken, then judgment may, upon motion of counsel for the plaintiff herein, be entered in favor of the plaintiff and against the defendant as prayed in plaintiff's complaint; that the judgments in both of said cases numbered 7806 and 7805, respectively, have been affirmed by the Supreme Court of the State of Idaho.

The court further finds that the showing made by defendant is not sufficient to justify the relieving of defendant from said stipulation, that the motion therefor should be denied and that the motion of plaintiff for judgment

as prayed in its complaint should be granted. It is therefore ordered that the motion of defendant asking that it be relieved from said stipulation be and the same is by the court denied, and that the motion of plaintiff for judgment in accordance with the prayer of its complaint herein be and the same is granted.

It is by the court further ordered and adjudged that the plaintiff have and recover of and from the defendant on the cause of action set out in the complaint in this action the sum of Two Hundred and Twenty-five Dollars, with interest thereon at the rate of seven per cent per annum from the 11th day of April, 1929, amounting at this time to the sum of \$265.69, besides the costs and disbursements of suit taxed at \$11.40.

By the Court:

(Signed) WM. A. BABCOCK,
Judge District Court.

EXHIBIT E.

In the District Court of the Eleventh Judicial
District of the State of Idaho, in and for
the County of Twin Falls.

Common School District No. 62, in the
County of Twin Falls, State of
Idaho,

Plaintiff,

vs.

Twin Falls National Bank, a corporation,
Defendant.

Case No. 7876

ORDER AND JUDGMENT

Be it remembered that heretofore, to-wit, on the 12th day of November, 1931, this cause came on for hearing on the motion of defendant for an order relieving it from that portion of the stipulation entered into by the parties to the action on the 12th day of February, 1931, which is in words and figures as follows:

“It is further stipulated and agreed that in the event the judgments entered in cases No. 7806 and 7805, respectively, are both affirmed by the Supreme Court, then judgment may upon motion for counsel for the plaintiff herein be entered in these actions in favor of the plaintiff and against the defendant as prayed in plaintiff’s complaint,” and on the motion of plaintiff for judgment as prayed in its complaint, at which time the plaintiff appeared by Sweeley & Sweeley, its attorneys, and the de-

fendant appeared by James R. Bothwell and W. Orr Chapman, its attorneys; whereupon the court heard arguments of counsel on said motions and at their close took said matters under advisement.

Now on this 8th day of December, 1931, the court having considered said motions and being fully advised in the premises finds that on the 12th day of February, 1931, the parties to this action, acting by their attorneys of record, signed their written stipulation whereby it was by them agreed that in the event the judgments which had been entered by this court in cases numbered 7806 and 7805, in this court, were both affirmed by the Supreme Court of the State of Idaho, to which court appeals in said cases had been taken, then judgment may, upon motion of counsel for plaintiff herein be entered in favor of plaintiff and against defendant as prayed in plaintiff's complaint; that the judgments in both of said cases numbered 7806 and 7805 have been affirmed by the supreme court of the State of Idaho.

The court further finds that the showing made by the defendant is not sufficient to justify the relieving of defendant from its said stipulation, that the motion therefor should be denied, and that the motion of plaintiff for judgment as prayed in its complaint should be

granted. It is therefore ordered that the motion of defendant be and the same is by the court denied and that the motion of plaintiff for judgment be and the same is granted.

It is by the court further ordered and adjudged that the plaintiff have and recover of and from the defendant on plaintiff's first cause of action set out in its complaint the sum of \$100 with interest thereon at the rate of seven per cent per annum from the 8th day of January, 1929, and on plaintiff's second cause of action set out in its complaint the sum of \$240 with interest thereon at the rate of seven per cent per annum from the 25th day of March, 1929, said two claims amounting at this time to the sum of \$404.49, and that plaintiff recover its costs and disbursements of suit amounting to \$11.40.

By the Court:

(signed) WM. A. BABCOCK,
Judge District Court.

(Title of Court and Cause)

ANSWER

Filed Oct. 31, 1932.

Comes now G. D. Thompson as Receiver of the Twin Falls National Bank, the above named de-

defendant, and in answer to Count One of plaintiff's Bill in Equity on file herein, admits, denies and alleges:

I.

Admits each and all of the allegations contained in Paragraph I of Count I of said Bill in Equity.

II.

Admits each and all of the allegations contained in Paragraph II of Count I of said Bill in Equity.

III.

Admits each and all of the allegations contained in Paragraph III of Count I of said Bill in Equity.

IV.

Admits each and all of the allegations contained in Paragraph IV of Count I of said Bill in Equity.

V.

Admits each and all of the allegations contained in Paragraph V of Count I of said Bill in Equity.

VI.

Admits each and all of the allegations contained in Paragraph VI of Count I of said Bill in Equity.

VII.

Answering the allegations contained in Paragraph VII of said Count I, defendant denies that on or about January 19, 1929, or at any other time the said Twin Falls National Bank received from

the County Treasurer out of the funds of said school district the sum of One Hundred and Sixty Dollars or any other sum or amount. Admits each and all of the remaining allegations of said paragraph.

VIII.

Admits each and all of the allegations contained in Paragraph VIII of Count I of said Bill in Equity.

IX.

Admits that said warrant was by the said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any order or orders issued by said School District No. 32 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of the said School District No. 32 or by its chairman or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 18th day of January, 1929, had purchased for a valuable cash consideration, to-wit, the sum of \$160.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District No. 32 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction of Twin Falls Coun-

ty, Idaho. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County, Idaho, in good faith on or about the 18th day of January, 1929, and the County Auditor of said County issued to said Bank the warrant referred to in said Count I. Admits all the remaining allegations of Paragraph IX of said Count I.

X.

Denies each and all of the allegations contained in Paragraph X of Count I of said Bill in Equity.

Further answering the allegations contained in Count I of plaintiff's Bill in Equity on file herein and by way of a further, separate and affirmative defense thereto, defendant alleges:

That no part of the proceeds of the warrant described in Count I of plaintiff's Bill in Equity on file herein and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver. And the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant, and no part of said proceeds is now in the

custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count I of plaintiffs' Bill in Equity on file herein and by way of a further, separate and affirmative defense thereto, defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon the warrant, claim, matters and things set forth in Count I of plaintiffs' Bill in Equity said Common School District numbered 32 commenced, and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho, in and for the County of Twin Falls. That a final judgment was made and given in said action December 8th, 1931, in favor of said Common School District numbered 32, the plaintiff therein and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit A" is attached to and made a part of plaintiffs' Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 32 held against said Bank and which said claim is set forth in Count I in said Bill in Equity was by the prosecution and final determination of said action merged

in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District No. 32 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 32 now holds against said Bank is based upon said money judgment, and plaintiff School District No. 32 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said bank impressed with a trust for the benefit of plaintiff School District No. 32.

Further answering the allegations contained in Count I of plaintiffs' Bill in Equity on file herein and by way of a further, separate and affirmative defense thereto, defendant alleges:

That it appears upon the face of plaintiff's complaint that the cause of action and the claims, matters and things set out in Count I of said complaint are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count II of plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

XI.

Admits each and all of the allegations contained in Paragraph XI of said Count II.

XII.

Admits each and all of the allegations contained in Paragraph XII of said Count II.

XIII.

Answering the allegations contained in Paragraph XIII of said Count II defendant denies that on or about the 9th day of October, 1929, the said Twin Falls National Bank received from the County Treasurer out of the funds of said School District the sum of \$112.00 or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

XIV.

Admits each and all of the allegations contained in Paragraph XIV of said Count II.

XV.

Admits that said warrant was by said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any Order or Orders issued by said School District Numbered 32 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of said School District numbered 32 or by

its Chairman, or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 20th day of September, 1929, had purchased for a valuable consideration, to-wit, the sum of \$112.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District numbered 32 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said Order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction. That said Twin Falls National Bank presented said Order for warrant to the Auditor of Twin Falls County, Idaho, in good faith on or about the 20th day of September, 1929, and the County Auditor of said County issued to said Bank the warrant referred to in said Count II. Admits all the remaining allegations of Paragraph XV of said Count II.

XVI.

Denies each and all of the allegations contained in Paragraph XVI of said Count II. And denies that said Twin Falls National Bank wrongfully and without authority of law, or otherwise, obtained and took from the funds of said School District the said sums of \$160.00 and \$112.00, or any other sum or amount.

XVII.

Denies each and all of the allegations contained in Paragraph XVII of said Count II.

XVIII.

Admits each and all of the allegations contained in Paragraph XVIII of said Count II.

XIX.

Admits each and all of the allegations contained in Paragraph XIX of said Count II.

XX.

Admits each and all of the allegations contained in Paragraph XX of said Count II.

Further answering the allegations contained in Count II of plaintiffs' Bill in Equity on file herein and by way of a first, further, separate and affirmative defense thereto defendant alleges:

That no part of the proceeds of the \$112.00 warrant described in Count II and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver, and the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant and no part of the proceeds is now in said

Bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count II of plaintiffs' Bill in Equity on file herein and by way of a second, further, separate and affirmative defense thereto defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon the \$112.00 warrant and the claim, matters and other things set forth in said Count II said Common School District Numbered 32 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho in and for the County of Twin Falls. That a final judgment was made and given in said action December 8, 1931, in favor of said Common School District Numbered 32, the plaintiff therein and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit A" is attached to and made a part of plaintiffs' Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 32 held against said Bank and which said claim is set forth in Count II in said Bill in Equity was by the prosecu-

tion and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District No. 32 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 32 now holds against said bank is based upon said money judgment, and plaintiff School District No. 32 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 32.

Further answering the allegations contained in Count II of plaintiffs' Bill in Equity on file herein and by way of a third, further, separate and affirmative defense thereto defendant alleges:

That it appears upon the face of plaintiffs' Bill in Equity that the cause of action and the claims, matters and things set out in Count II of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count III of plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

I.

Admits each and all of the allegations contained in Paragraph I of said Count III.

II.

Admits each and all of the allegations contained in Paragraph II of said Count III.

III.

Admits each and all of the allegations contained in Paragraph III of said Count III.

IV.

Admits each and all of the allegations contained in Paragraph IV of said Count III.

V.

Admits each and all of the allegations contained in Paragraph V of said Count III.

VI.

Admits each and all of the allegations contained in Paragraph VI of said Count III.

VII.

Answering the allegations contained in Paragraph VII of said Count III defendant denies that on or about the 20th day of September, 1929, or at any other time the said Twin Falls National Bank received from the County Treasurer out of the funds of said School District the sum of \$160.00, or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

VIII.

Admits each and all of the allegations contained in Paragraph VIII of said Count III.

IX.

Admits that said warrant was by the said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any order or orders issued by said School District numbered 36 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of said School District numbered 36 or by its chairman or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 11th day of September, 1929, had purchased for a valuable cash consideration, to-wit, the sum of \$160.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District numbered 36 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction of Twin Falls County, Idaho. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County in good faith on or about the 11th day of September, 1929, and the County Audi-

tor of said County issued to said Bank the warrant referred to in said Count III. Admits each and all of the remaining allegations of said Paragraph.

X.

Denies each and all of the allegations contained in Paragraph X of said Count III.

XI.

Denies each and all of the allegations contained in Paragraph XI of said Count III.

XII.

Admits each and all of the allegations contained in Paragraph XII of said Count III.

XIII.

Admits each and all of the allegations contained in Paragraph XIII of said Count III.

XIV.

Admits each and all of the allegations contained in Paragraph XIV of said Count III.

Further answering the allegations contained in Count III of plaintiff's Bill in Equity on file herein and by way of a first, further, separate and affirmative defense thereto defendant alleges:

That no part of the proceeds of the warrant described in Count III of plaintiffs' Bill in Equity on file herein and no part of the proceeds of any check or draft given in payment of said warrant

ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver. And the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant, and no part of the proceeds is now in said bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count III of plaintiffs' Bill in Equity on file herein and by way of a second, further, separate and affirmative defense thereto defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon the warrant, claim, matters and things set forth in said Count III said Common School District numbered 36 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County. That final judgment was made and given in said action on the 9th day of December, 1931, in favor of said Common School District numbered 36, the plaintiff therein, and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit B" is at-

tached to and by reference made a part of plaintiffs' Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 36 held against said Bank and which said claim is set forth in Count III in said Bill in Equity was by the prosecution and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District numbered 36 at all times since judgment was made and given has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 36 now holds against said bank is based upon said money judgment, and plaintiff School District No. 36 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 36.

Further answering the allegations contained in Count III of plaintiffs' Bill in Equity on file herein and by way of a third, further, separate and affirmative defense thereto, defendant alleges:

That it appears upon the face of plaintiffs' Bill in Equity that the cause of action and the claims,

matters and things set out in Count III of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count IV of plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

I.

Admits each and all of the allegations contained in Paragraph I of said Count IV.

II.

Admits each and all of the allegations contained in Paragraph II of said Count IV.

III.

Admits each and all of the allegations contained in Paragraph III of said Count IV.

IV.

Admits each and all of the allegations contained in Paragraph IV of said Count IV.

V.

Admits each and all of the allegations contained in Paragraph V of said Count IV.

VI.

Admits each and all of the allegations contained in Paragraph VI of said Count IV.

VII.

Answering the allegations contained in Paragraph VII of said Count IV defendant denies that

on or about the 1st day of June, 1929, or at any other time the said Twin Falls National Bank received from the County Treasurer out of the funds of said School District the sum of \$225.00, or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

VIII.

Admits each and all of the allegations contained in Paragraph VIII of said Count IV.

IX.

Admits that said warrant was by the said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any order or orders issued by said School District numbered 47 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of said School District numbered 47 or by its chairman or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 28th day of May, 1929, had purchased for a valuable cash consideration, to-wit, the sum of \$225.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District numbered 47 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned

by the County Superintendent of Public Instruction of Twin Falls County, Idaho. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County in good faith on or about the 28th day of May, 1929, and the County Auditor of said County issued to said Bank the warrant referred to in said Count IV. Admits each and all of the remaining allegations of said Paragraph.

X.

Denies each and all of the allegations contained in Paragraph X of said Count IV.

XI.

Denies each and all of the allegations contained in Paragraph XI of said Count IV.

XII.

Admits each and all of the allegations contained in Paragraph XII of said Count IV.

XIII.

Admits each and all of the allegations contained in Paragraph XIII of said Count IV.

XIV.

Admits each and all of the allegations contained in Paragraph XIV of said Count IV.

Further answering the allegations contained in Count IV of plaintiffs' Bill in Equity on file herein and by way of a first, further, separate and affirmative defense thereto defendant alleges:

That no part of the proceeds of the warrant described in Count IV of plaintiffs' Bill in Equity on file herein and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver. And the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant, and no part of the proceeds is now in said bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count IV of plaintiffs' Bill in Equity on file herein and by way of a second, further, separate and affirmative defense thereto defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon the warrant, claim, matters and things set forth in said Count IV said Common School District numbered 47 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County. That final judgment was made and given in said action on the 8th day of December, 1931, in favor of said Common School District Num-

bered 47, the plaintiff therein, and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit C" is attached to and by reference made a part of plaintiff's Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 47 held against said Bank and which said claim is set forth in Count IV in said Bill in Equity was by the prosecution and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District numbered 47 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 47 now holds against said bank is based upon said money judgment, and plaintiff School District No. 47 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 47.

Further answering the allegations contained in Count IV of plaintiffs' Bill in Equity on file herein

and by way of a third, further, separate and affirmative defense thereto, defendant alleges:

That it appears upon the face of plaintiffs' Bill in Equity that the cause of action and the claims, matters and things set out in Count IV of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count V of Plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

I.

Admits each and all of the allegations contained in Paragraph I of said Count V.

II.

Admits each and all of the allegations contained in Paragraph II of said Count V.

III.

Admits each and all of the allegations contained in Paragraph III of said Count V.

IV.

Admits each and all of the allegations contained in Paragraph IV of said Count V.

V.

Admits each and all of the allegations contained in Paragraph V of said Count V.

VI.

Admits each and all of the allegations contained in Paragraph VI of said Count V.

VII.

Answering the allegations contained in Paragraph VII of said Count V defendant denies that on or about the 15th day of May, 1929, or at any other time the said Twin Falls National Bank received from the County Treasurer out of the funds of said School District the sum of \$225.00, or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

VIII.

Admits each and all of the allegations contained in Paragraph VIII of said Count V.

IX.

Admits that said warrant was by the said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any order or orders issued by said School District numbered 59 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of said School District numbered 59 or by its chairman or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 7th day of May, 1929, had purchased for a valuable cash considera-

tion, to-wit, the sum of \$225.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District numbered 59 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction of Twin Falls County, Idaho. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County in good faith on or about the 7th day of May, 1929, and the County Auditor of said County issued to said Bank the warrant referred to in said Count V. Admits each and all of the remaining allegations of said Paragraph.

X.

Denies each and all of the allegations contained in Paragraph X of said Count V.

XI.

Denies each and all of the allegations contained in Paragraph XI of said Count V.

XII.

Admits each and all of the allegations contained in Paragraph XII of said Count V.

XIII.

Admits each and all of the allegations contained in Paragraph XIII of said Count V.

XIV.

Admits each and all of the allegations contained in Paragraph XIV of said Count V.

Further answering the allegations contained in Count V of plaintiffs' Bill in Equity on file herein and by way of a first, further, separate and affirmative defense thereto defendant alleges:

That no part of the proceeds of the warrant described in Count V of plaintiffs' Bill in Equity on file herein and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver. And the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant, and no part of the proceeds is now in said bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count V of plaintiffs' Bill in Equity on file herein and by way of a second, further, separate and affirmative defense thereto defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon

the warrant, claim, matters and things set forth in said Count V of said Common School District numbered 59 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho, in and for Twin Falls County. That final judgment was made and given in said action on the 8th day of December, 1931, in favor of said Common School District numbered 59, the plaintiff therein, and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit D" is attached to and by reference made a part of plaintiffs' Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 59 held against said Bank and which said claim is set forth in Count V in said Bill in Equity was by the prosecution and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District numbered 59 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 59 now holds against said Bank is based upon said money judgment, and plaintiff School District No. 59 is not entitled to a preference over the depositors

and other creditors of said Bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 59.

Further answering the allegations contained in Count V of plaintiffs' Bill in Equity on file herein and by way of a third, further, separate and affirmative defense thereto, defendant alleges:

That it appears upon the face of plaintiffs' Bill in Equity that the cause of action and the claims, matters and things set out in Count V of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count VI of plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

I.

Admits each and all of the allegations contained in Paragraph I of Count VI of said Bill in Equity.

II.

Admits each and all of the allegations contained in Paragraph II of Count VI of said Bill in Equity.

III.

Admits each and all of the allegations contained in Paragraph III of Count VI of said Bill in Equity.

IV.

Admits each and all of the allegations contained in Paragraph IV of Count VI of said Bill in Equity.

V.

Admits each and all of the allegations contained in Paragraph V of Count VI of said Bill in Equity.

VI.

Admits each and all of the allegations contained in Paragraph VI of Count VI of said Bill in Equity.

VII.

Answering the allegations contained in Paragraph VII of said Count VI, defendant denies that on or about the 19th day of January, 1929, or at any other time the said Twin Falls National Bank received from the County Treasurer out of the funds of said school district the sum of \$100.00 or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

VIII.

Admits each and all of the allegations contained in Paragraph VIII of Count VI of said Bill in Equity.

IX.

Admits that said warrant was by the said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor

any order or orders issued by said School District No. 62 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of the said School District No. 62 or by its Chairman or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 8th day of January, 1929, had purchased for a valuable cash consideration, to-wit, the sum of \$100.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District No. 62 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction of Twin Falls County, Idaho. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County, Idaho, in good faith, on or about the 8th day of January, 1929, and the County Auditor of said County issued to said Bank the warrant referred to in said Count VI. Admits all the remaining allegations of Paragraph IX of said Count VI.

X.

Denies each and all of the allegations contained in Paragraph X of Count VI of said Bill in Equity.

Further answering the allegations contained in Count VI of plaintiffs' Bill in Equity on file herein

and by way of a further, separate and affirmative defense thereto, defendant alleges:

That no part of the proceeds of the warrant described in Count VI of plaintiffs' Bill in Equity on file herein and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver. And the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant, and no part of the proceeds is now in said bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count VI of plaintiffs' Bill in Equity on file herein and by way of a further, separate and affirmative defense thereto, defendant alleges:

That for the purpose of recovering a judgment against said Twin Falls National Bank based upon the warrant, claim, matters and things set forth in Count VI of plaintiffs' Bill in Equity said Common School District numbered 62 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State

of Idaho, in and for the County of Twin Falls. That a final judgment was made and given in said action December 8th, 1931, in favor of said Common School District numbered 62, the plaintiff therein and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit E" is attached to and made a part of plaintiffs' Bill in Equity on file herein.

That said judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 62 held against said Bank and which said claim is set forth in Count VI in said Bill in Equity was by the prosecution and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District No. 62 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 62 now holds against said Bank is based upon said money judgment, and plaintiff School District No. 62 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 62.

Further answering the allegations contained in Count VI of plaintiffs' Bill in Equity on file herein and by way of a further, separate and affirmative defense thereto, defendant alleges:

That it appears upon the face of plaintiffs' complaint that the cause of action and claims, matters and things set out in Count VI of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

Answering the allegations contained in Count VII of plaintiffs' Bill in Equity on file herein defendant admits, denies and alleges:

XI.

Admits each and all of the allegations contained in Paragraph XI of said Count VII.

XII.

Admits each and all of the allegations contained in Paragraph XII of said Count VII.

XIII.

Answering the allegations contained in Paragraph XIII of said Count VII defendant denies that on or about the 28th day of March, 1929, the said Treasurer out of the funds of said School District the sum of \$240.00 or any other sum or amount. Admits each and all of the remaining allegations of said Paragraph.

XIV.

Admits each and all of the allegations contained in Paragraph XIV of said Count VII.

XV.

Admits that said warrant was by said Twin Falls National Bank obtained from the said County Auditor of Twin Falls County, Idaho, without presenting or delivering to the said County Auditor any order or orders issued by said School District numbered 62 or in its behalf or by its authority or any order signed by the Clerk of the Board of Trustees of said School District numbered 62 or by its chairman, or any of its members but in that regard defendant alleges the facts to be that said Twin Falls National Bank prior to said 25th day of March, 1929, had purchased for a valuable consideration, to-wit, the sum of \$240.00 at its banking house in Twin Falls, Idaho, an order purporting to be the genuine and bona fide order of said School District numbered 62 drawn upon and directed to the County Auditor of Twin Falls County, Idaho. That said order in all respects appeared to be regular and genuine and was duly and regularly countersigned by the County Superintendent of Public Instruction. That said Twin Falls National Bank presented said order for warrant to the Auditor of Twin Falls County, Idaho, in good faith on or about the 25th day of March, 1929, and the County Auditor of said County issued to said Bank the warrant

referred to in said Count VII. Admits all the remaining allegations of Paragraph XV of said Count VII.

XVI.

Denies each and all of the allegations contained in Paragraph XVI of said Count VII. And denies that said Twin Falls National Bank wrongfully and without authority of law, or otherwise, obtained and took from the funds of said School District the said sums of \$100.00 and \$240.00, or any other sum or amount.

XVII.

Denies each and all of the allegations contained in Paragraph XVII of said Count VII.

XVIII.

Admits each and all of the allegations contained in Paragraph XVIII of said Count VII.

XIX.

Admits each and all of the allegations contained in Paragraph XIX of said Count VII.

XX.

Admits each and all of the allegations contained in Paragraph XX of said Count VII.

Further answering the allegations contained in Count VII of plaintiffs' Bill in Equity on file herein and by way of a first, further, separate and affirmative defense thereto defendant alleges:

That no part of the proceeds of the \$240.00 warrant described in Count VII and no part of the proceeds of any check or draft given in payment of said warrant ever came into the possession or custody of said Twin Falls National Bank or into the hands of either Raymond H. Haase, Receiver, or G. D. Thompson, Receiver, and the funds of said Twin Falls National Bank have not been augmented by the proceeds of said warrant or by the proceeds of any check or draft given in payment of said warrant and no part of the proceeds is now in said Bank or among its funds and no part of said proceeds is now in the custody, care or possession of the defendant G. D. Thompson, Receiver.

Further answering the allegations contained in Count VII of plaintiffs' Bill in Equity on file herein and by way of a second, further, separate and affirmative defense thereto defendant alleges:

That for the purpose of recovering a judgment against the said Twin Falls National Bank based upon the \$240.00 warrant and the claim, matters and other things set forth in said Count VII said Common School District numbered 62 commenced and prosecuted to final judgment an action in the District Court of the Eleventh Judicial District of the State of Idaho in and for the County of Twin Falls. That a final judgment was made and given in said action December 8, 1931 in favor of said Common School District numbered 62, the plaintiff

therein, and against Twin Falls National Bank, defendant therein. That a copy of said Judgment, marked "Exhibit E" is attached to and made a part of plaintiffs' Bill in Equity on file herein.

That said Judgment so obtained in said action was a general money judgment and was not a judgment for the return of specific property. That such claim as plaintiff School District No. 62 held against said Bank and which said claim is set forth in Count VII in said Bill in Equity was by the prosecution and final determination of said action merged in the judgment given and made by the said District Court of Twin Falls County, Idaho, and plaintiff School District No. 62 at all times since judgment was made and given, has held and now holds only a general claim against the Receiver of said Bank. That such claim as the plaintiff School District No. 62 now holds against said bank is based upon said money judgment, and plaintiff School District No. 62 is not entitled to a preference over the depositors and other creditors of said bank and is not entitled to have any of the funds now in the custody of the Receiver of said Bank impressed with a trust for the benefit of plaintiff School District No. 62.

Further answering the allegations contained in Count VII of plaintiffs' Bill in Equity on file herein and by way of a third, further, separate and affirmative defense thereto defendant alleges:

That it appears upon the face of plaintiffs' Bill in Equity that the cause of action and the claims, matters and things set out in Count VII of said Bill in Equity are barred by the provisions of Subdivision 3 of Section 6611 of the Compiled Statutes of the State of Idaho.

WHEREFORE, This answering defendant prays for judgment as follows:

That plaintiffs take nothing under and by virtue of their Bill in Equity on file herein, that the same be dismissed, and that this answering defendant be allowed his costs and disbursements in this action expended, and such other and further relief as to the Court may seem meet and just in the premises.

FRANK L. STEPHAN,
Attorney for Defendant,
Residence and Office,
Twin Falls, Idaho.

(Duly verified)

(Service acknowledged)

(Title of Court and Cause)

STIPULATION

Filed Oct. 31, 1932

It is hereby stipulated and agreed by and between the parties hereto as follows:

That if the officers of the Twin Falls National Bank and the defendant G. D. Thompson, Receiver of said Bank, were called and sworn as witnesses upon the trial of this action, they would testify that at all times from and including the 15th day of January, 1929, up to and including the 23rd day of November, 1931, the said Twin Falls National Bank had cash on hand in an amount sufficient to pay in full the claims of the plaintiffs in suit herein and to pay also, in full the claim of the plaintiff in suit in case numbered 1729 in the above named court, and that on the date last stated, being the date when said Bank became insolvent and ceased doing business, it had cash on hand in the amount of \$7247.74.

That this stipulation may be introduced and used in evidence by either party hereto upon the trial of the above entitled action as proof of the matters above set forth.

Dated at Twin Falls, Idaho, this 17th day of October, 1932.

SWEELEY & SWEELEY,
Attorneys for Plaintiff,

FRANK L. STEPHAN,
Attorney for Defendant.

(Title of Court and Cause)

STIPULATION OF FACTS

Filed Oct. 31, 1932.

For the purpose of expediting and shortening the trial of the above entitled Cause IT IS HEREBY STIPULATED AND AGREED by and between Sweeley and Sweeley, attorneys for plaintiffs herein and Frank L. Stephan, attorney for defendant herein, as follows:

COUNT I.

I.

That regarding the allegations contained in Paragraph VII of Count I of plaintiffs' Bill in Equity and the allegations contained in Paragraph VII of defendant's Answer to Count I, the facts are:

That on or about the 18th day of January, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$160.-00 order for warrant, said warrant being numbered 27939. That thereafter and on or about the 19th day of January, 1929, said Twin Falls National Bank presented said warrant to the County Treas-

urer of said County and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the First National Bank of Twin Falls, Idaho. That said check was in the amount of \$575.25 and was for the repayment and redemption of said \$160.00 warrant and other warrants.

That on or about the 19th day of January, 1929, the Twin Falls National Bank cleared said \$575.25 check, together with other checks and items with said First National Bank and said First National Bank in settlement of the difference or balance of the clearings drew a draft upon the National Copper Bank of Salt Lake City, Utah, for the sum of \$774.04, payable to the Twin Falls National Bank and delivered said draft to said Twin Falls National Bank. That said Twin Falls National Bank forwarded said check to the Federal Reserve Bank at Salt Lake City and said Federal Reserve Bank collected said draft from said National Copper Bank and thereupon gave Twin Falls National Bank credit for said sum and thereafter said Federal Reserve Bank paid out all of the said sum of \$774.04 in satisfaction of drafts drawn by Twin Falls National Bank upon its account with said Federal Reserve Bank in payment of debts and obligations of said Twin Falls National Bank.

II.

That all of the allegations contained in Paragraph IX of Count I of plaintiffs' Bill in Equity are

true. That all of the allegations contained in Paragraph IX of defendant's Answer to Count I are true.

III.

That regarding the allegations contained in Paragraph X of Count I of plaintiff's Bill in Equity and Paragraph X of defendant's Answer to Count I the facts are:

That Twin Falls National Bank presented to the County Auditor the order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said Bank. Said Bank then presented said warrant to the County Treasurer for payment and the County Treasurer gave said bank a check drawn upon the First National Bank of Twin Falls, Idaho, as hereinabove set out in payment of said warrant and other warrants. That said Bank did not receive \$160.00 or any other sum in money from the Treasurer in payment of said warrant.

COUNT II.

I.

That regarding the allegations contained in Paragraph XIII of Count II of plaintiff's Bill in Equity, and the allegations contained in Paragraph XIII of defendant's Answer to Count II the facts are:

That on or about the 20th day of September, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$212.00 order for warrant and another order for warrant in the amount of \$290.00, said warrant being numbered 28171 in the amount of \$502.00. That thereafter and on or about the 8th or 9th day of October, 1929, said Twin Falls National Bank presented said warrant to the County Treasurer of said County and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho, for the sum of \$502.00 made payable to said Twin Falls National Bank.

That on the 9th day of October, 1929, the Twin Falls National Bank cleared said \$502.00 check, together with other checks and items with the Twin Falls Bank and Trust Company and said Twin Falls Bank and Trust Company in settlement of the difference or balance of the clearings drew a draft on the Walker Bank and Trust Company of Salt Lake City, Utah, for the sum of \$2203.10, payable to the Twin Falls National Bank and delivered said draft to said Twin Falls National Bank. That said Twin Falls National Bank forwarded said draft to the Federal Reserve Bank at Salt Lake City and said

Federal Reserve Bank collected said draft from said Walker Bank and Trust Company and thereupon gave said Twin Falls National Bank credit for said sum, and thereafter said Federal Reserve Bank paid out all of said sum of \$2203.10 in satisfaction of drafts drawn by said Twin Falls National Bank upon its account with said Federal Reserve Bank in payment of debts and obligations of said Twin Falls National Bank.

II.

That all of the allegations contained in Paragraph XV of Count II of plaintiffs' Bill in Equity are true. That all of the allegations contained in Paragraph XV of defendant's Answer to Count II are true.

III.

Regarding the allegations contained in Paragraph XVI of Count II of plaintiffs' Bill in Equity and the allegations contained in Paragraph XVI of defendant's Answer to Count II the facts are:

That Twin Falls National Bank presented to the County Auditor the order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said Bank. That said Bank then presented said warrant to the County Treasurer for payment and the County Treasurer gave said bank a check drawn upon the Twin Falls Bank and Trust Company, as hereinabove set out, in pay-

ment of said warrant. That said Bank did not receive \$212.00, or any other sum in money from the Treasurer in payment of said warrant.

COUNT III.

I.

That regarding the allegations contained in Paragraph VII of Count III of plaintiffs' Bill in Equity and the allegations contained in Paragraph VII of defendant's Answer thereto, the facts are:

That on or about the 11th day of September, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$160.00 Order for Warrant, and another order or orders for warrants amounting to \$107.78, said warrant being numbered 28144 in the amount of \$267.78. That thereafter said Twin Falls National Bank presented said warrant to the County Treasurer of said County for payment and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho, for the sum of \$267.78, made payable to said Twin Falls National Bank.

That on or about the 21st day of September, 1929, the Twin Falls National Bank cleared said

\$267.78 check, together with other checks and items with the Twin Falls Bank and Trust Company and said Twin Falls National Bank, in settlement of the difference or balance of the clearings, drew a draft on the Continental National Bank and Trust Company of Salt Lake City, Utah, for the sum of \$1311.98, payable to the Twin Falls Bank and Trust Company, and delivered said draft to said Twin Falls Bank and Trust Company, which said draft was thereafter and in due course collected by said Twin Falls Bank and Trust Company.

II.

That all of the allegations contained in Paragraph IX of Count III of plaintiff's Bill in Equity are true. That all of the allegations contained in Paragraph IX of defendant's Answer thereto are true.

III.

That regarding the allegations contained in Paragraph X of Count III of plaintiffs' Bill in Equity and Paragraph X of defendant's Answer thereto the facts are:

That Twin Falls National Bank presented to the County Auditor the order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said bank. That said bank then presented said warrant to the County Treasurer for payment and the County

Treasurer gave said bank a check drawn upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho, as hereinabove set out, in payment of said warrant. That said Bank did not receive \$160.00, or any other sum in money from the Treasurer in payment of said warrant.

COUNT IV.

I.

That regarding the allegations contained in Paragraph VII of Count IV of plaintiffs' Bill in Equity, and the allegations contained in Paragraph VII of defendant's Answer thereto the facts are:

That on or about the 28th day of May, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$225.00 order for warrant and another order or orders for warrants, said warrant being numbered 28062. That thereafter, and on or about the 1st day of June, 1929, said Twin Falls National Bank presented said warrant to the County Treasurer of said County for payment and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho. That said check was in the amount of \$500.00 and was for the payment and redemption of said above described warrant.

That on or about the 6th day of June, 1929, Twin Falls National Bank cleared said \$500.00 check, together with other checks and items, with said Twin Falls Bank and Trust Company and said Twin Falls National Bank in settlement of the difference or balance of the clearings drew a draft upon Continental National Bank of Salt Lake City, Utah, for \$3917.52 payable to the Twin Falls Bank and Trust Company and delivered said draft to said Twin Falls Bank and Trust Company and said Twin Falls Bank and Trust Company thereafter in due course collected the same.

II.

That all of the allegations contained in Paragraph IX of Count IV of plaintiffs' Bill in Equity are true. That all of the allegations contained in Paragraph IX of defendant's answer thereto are true.

III.

That regarding the allegations contained in Paragraph X of Count IV of plaintiffs' Bill in Equity and Paragraph X of defendant's Answer thereto, the facts are:

That Twin Falls National Bank presented to the County Auditor the Order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said bank. Said Bank then presented said warrant to the County Treasurer for

payment and the County Treasurer gave said bank a check drawn upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho, as hereinabove set out, in payment of said warrant. That said Twin Falls National Bank did not receive the sum of \$225.00 or any other sum in money from the Treasurer in payment of said Warrant.

COUNT V.

I.

Regarding the allegations contained in Paragraph VII of Count V of plaintiffs' Bill in Equity and the allegations contained in Paragraph VII of defendant's Answer thereto, the facts are:

That on or about the 7th day of May, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$225.00 Order for Warrant, said warrant being numbered 28040. That thereafter and on or about the 15th day of May, 1929, said Twin Falls National Bank presented said warrant to the County Treasurer of said County and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the First National Bank of Twin Falls, Idaho. That said check was in the amount of \$225.00 and was for the payment and redemption of said \$225.00 warrant.

That on or about the 16th day of May, 1929, the Twin Falls National Bank cleared said \$225.00 check, together with other checks and items with said First National Bank and said Twin Falls National Bank in settlement of the difference or balance of the clearings drew a draft upon the Continental National Bank of Salt Lake City, Utah, for the sum of \$559.25 payable to said First National Bank and delivered said draft to said First National Bank and said First National Bank thereafter in due course collected the same.

II.

That all of the allegations contained in Paragraph IX of Count V of plaintiffs' Bill in Equity are true. That all of the allegations contained in Paragraph IX of defendant's Answer thereto are true.

III.

That regarding the allegations contained in Paragraph X of Count V of plaintiffs' Bill in Equity and Paragraph X of defendant's Answer thereto the facts are:

That Twin Falls National Bank presented to the County Auditor the order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said bank. Said Bank then presented said warrant to the County Treasurer for payment and the County Treasurer gave said Bank a check drawn upon the First National

Bank of Twin Falls, Idaho, as hereinabove set out, in payment of said warrant. That said Twin Falls National Bank did not receive \$225.00 or any other sum in money from the Treasurer in payment of said warrant.

COUNT VI.

I.

Regarding the allegations contained in Paragraph VII of Count VI of plaintiffs' Bill in Equity and the allegations contained in Paragraph VII of defendant's Answer thereto, the facts are:

That on or about the 8th day of January, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$100.00 order for warrant and another order or orders for warrants, said warrant being numbered 27967. That thereafter and on or about the 15th day of January, 1929, said Twin Falls National Bank presented said warrant to the County Treasurer of said County and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon Twin Falls Bank and Trust Company of Twin Falls, Idaho. That said check was in the amount of \$151.69 and was for the payment and redemption of said above described warrant.

That on or about the 15th day of January, 1929, the Twin Falls National Bank cleared said \$151.69 check together with other checks and items with said Twin Falls Bank and Trust Company and said Twin Falls National Bank in settlement of the difference or balance of the clearings drew a draft upon the Continental National Bank of Salt Lake City, Utah, for the sum of \$4024.00 payable to said Twin Falls Bank and Trust Company and delivered said draft to said Twin Falls Bank and Trust Company and said Twin Falls Bank and Trust Company thereafter in due course collected said draft.

II.

That all of the allegations contained in Paragraph IX of Count VI of plaintiffs' Bill in Equity are true. That all of the allegations contained in Paragraph IX of defendant's Answer thereto are true.

III.

Regarding the allegations contained in Paragraph X of Count VI of plaintiffs' Bill in Equity and the allegations contained in Paragraph X of defendant's Answer thereto the facts are:

The Twin Falls National Bank presented to the County Auditor the order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said Bank. That said Bank then presented the said warrant to the

County Treasurer for payment and the County Treasurer gave said Bank a check drawn upon the Twin Falls Bank and Trust Company of Twin Falls, Idaho, as hereinabove set out, in payment of said warrant. That said Twin Falls National Bank did not receive \$100.00 or any other sum in money from the Treasurer in payment of said warrant.

COUNT VII.

I.

That regarding the allegations contained in Paragraph XIII of Count VII of plaintiffs' Bill in Equity and the allegations contained in Paragraph XIII of defendant's Answer thereto, the facts are:

That on or about the 25th day of March, 1929, the Twin Falls National Bank caused the County Auditor to issue to it a warrant drawn upon the Treasurer of Twin Falls County, which officer is also the Treasurer of the several Common School Districts in the County, for the payment of a \$240.-00 order for warrant and another order or orders for warrants, said warrant being numbered 28006. That thereafter and on or about the 28th day of March, 1929, said Twin Falls National Bank presented said warrant to the County Treasurer of said County and by virtue thereof received from said Treasurer a check drawn by said Treasurer upon the First National Bank of Twin Falls, Idaho, for the sum of \$570.00 made payable to said Twin Falls National Bank.

That on or about the 29th day of March, 1929, the Twin Falls National Bank cleared said \$570.00 check, together with other checks and items with said First National Bank and said First National Bank in settlement of the difference or balance of the clearings drew a draft on the National Copper Bank of Salt Lake City, Utah, for the sum of \$656.90, payable to the Twin Falls National Bank and delivered said draft to said Twin Falls National Bank. That the Twin Falls National Bank forwarded said draft to the Federal Reserve Bank at Salt Lake City and said Federal Reserve Bank collected said draft from the National Copper Bank, and thereupon gave said Twin Falls National Bank credit for said sum and thereafter said Federal Reserve Bank paid out all of said sum of \$656.90 in satisfaction of drafts drawn by said Twin Falls National Bank upon its account with said Federal Reserve Bank in payment of debts and obligations of said Twin Falls National Bank.

II.

That all of the allegations contained in Paragraph XV of Count VII of plaintiffs' Bill in Equity are true. That all of the allegations contained in Paragraph XV of defendant's Answer thereto are true.

III.

That regarding the allegations contained in Paragraph XVI of Count VII of plaintiffs' Bill in

Equity and the allegations contained in Paragraph XVI of defendant's Answer thereto, the facts are:

That Twin Falls National Bank presented to the County Auditor the Order which it had previously purchased and caused the County Auditor to issue and deliver a warrant to said Bank. That said Bank then presented said warrant to the County Treasurer for payment and the County Treasurer gave said Bank a check drawn upon the First National Bank, as hereinabove set out, in payment of said warrant. That said Twin Falls National Bank did not receive \$240.00 or any other sum in money from the Treasurer in payment of said warrant.

COUNTS I TO VII INCLUSIVE.

That in addition to the facts in this stipulation and agreement hereinabove set out, IT IS FURTHER STIPULATED AND AGREED:

That the account of said Twin Falls National Bank in said Federal Reserve Bank on November 2, 1931, was overdrawn. That on November 23, 1931, the date said Bank closed its doors and suspended business operations, said Twin Falls National Bank had to its credit in its account in said Federal Reserve Bank approximately \$5000.00 which said account and the whole thereof was by said Federal Reserve Bank appropriated and applied under its general collateral agreement to a reduction of the

debt due from said Twin Falls National Bank to said Federal Reserve Bank.

That the several orders for school warrants which the said Twin Falls National Bank had purchased and which constitute a basis for this action, and which said orders said Bank presented to the County Auditor of Twin Falls County, were forged and fictitious orders and were not the genuine orders of plaintiffs. That said Twin Falls National Bank had purchased said orders in good faith and for valuable considerations and with no notice that they or any of them were forged or fictitious and the said Twin Falls National Bank did not learn that said orders or any of them were forged and fictitious until long after the transactions involved in this case were terminated.

IT IS FURTHER STIPULATED AND AGREED That either party may introduce herein oral or documentary evidence at the time of the trial of this case and that this Stipulation of Facts may be filed in the above entitled cause by either of the parties hereto.

Dated this 28th day of October, 1932.

SWEELEY & SWEELEY,
Attorneys for Plaintiffs.

FRANK L. STEPHAN,
Attorney for Defendant.

(Title of Court and Cause)

STIPULATION

Filed Oct. 31, 1932.

Whereas Common School Districts Nos. 32, 36, 47, 59, and 62 in Twin Falls County, Idaho, have recovered judgments against the Twin Falls National Bank and have presented them to the defendant asking that they be made preferred and paid in preference to the claims of the general creditors of the bank;

And whereas the legal questions involved in such demand and the facts upon which it is based are substantially the same as those in case numbered 1729 now pending for trial in the above entitled court;

And whereas it is deemed advisable by the parties that the claims of all of said school districts should be heard and determined at the same time that case No. 1729 is heard by the court;

It is therefore, by the parties hereto, stipulated and agreed as follows:

That, if satisfactory to the court, the plaintiffs in the action above entitled may file their bill in said proposed suit at any time on or before the day set for the hearing of said case No. 1729, and that on or before said day the defendant may file his answer to said bill, and that such new suit may be

heard and determined in connection with said case No. 1729.

It is further stipulated that any objection which might be made to a misjoinder of parties plaintiff in such proposed new suit is and will be waived by the defendant therein.

Signed this 21st day of September, 1932.

SWEELEY & SWEELEY,
Attorneys for Plaintiffs.

FRANK L. STEPHAN,
Attorney for Defendants.

(Title of Court and Cause)

MEMORANDUM OPINION

Filed Dec. 29, 1932.

SWEELEY & SWEELEY, of Twin Falls, Idaho,
attorneys for Plaintiffs.

FRANK L. STEPHAN, of Twin Falls, Idaho, at-
torney for defendants.

CAVANAH, District Judge:

These two actions were brought by the school districts against the receiver of the Twin Falls National Bank and were presented together as the same questions are involved in each case.

In Action No. 1729, which relates to the alleged claims of School District No. 54, the district urges that it be decreed to have a preferred claim in the sum of \$333.88 plus \$11.40 costs incurred in the state court, against the money and assets of the Twin Falls National Bank. It appears that the bank, before the insolvency presented to the County Auditor an order of the plaintiff which proved to be a forgery, for a warrant calling for payment from its funds in the hands of the County Treasurer in the sum of \$290.00, and a warrant by the Auditor was then issued and delivered to the bank. The warrant was then presented by the bank to the County Treasurer and received in payment a check upon the Twin Falls Bank & Trust Company, payable to the Twin Falls National Bank. Thereafter the Twin Falls National Bank cleared the check together with other checks with the Twin Falls Bank & Trust Company who then drew a draft on the Walker Bank & Trust Company of Salt Lake City for \$2203.10, payable to the Twin Falls National Bank. The draft was then forwarded by the defendant, Twin Falls National Bank, to the Federal Reserve Bank at Salt Lake City, which was collected and credit given to the Twin Falls National Bank for said sum, and thereafter the Federal Reserve Bank paid out all the said \$2203.10 in satisfaction of drafts drawn on the Twin Falls National Bank upon its account with the Federal Reserve

Bank and in payment of obligations of the Twin Falls National Bank. This was all done prior to the closing of the Twin Falls National Bank.

After the Twin Falls National Bank denied liability to the District for a return of this money suit was brought against it by the district in the state court which resulted in a final judgment in favor of the District. At all times from the time the warrant was presented to the Treasurer and payment made the bank had on hand cash in an amount sufficient to pay in full the claim of the District and on the day it became insolvent and suspended business it had cash on hand in the sum of \$7247.74.

The reason urged by the defendant against the allowance and making the plaintiff's claim a preferred one is that it must appear that the funds claimed must be impressed with a trust, that the assets of the bank must have been increased or augmented by the transaction in which the fund was involved and that the district must be able to trace the fund into the hands of the receiver and there identify the same.

Under the facts disclosed by the record it is clear that the Twin Falls National Bank, prior to its suspension of business, received the funds of the district upon a forged order which was paid out of the funds of the district and received and accepted

credit for the amount with the Federal Reserve Bank upon its obligations there. When in doing so it thereby enlarged its assets as the money under such a transaction was traced to its assets and is regarded as the receipt by it of that amount of cash which became a trust fund in the hands of the bank. *Merchants' Nat. Bank of Helena, Mont. et al. v. School Dist. No. 8 of Meagher County, Mont.*, 94 F. 705; *Kansas State Bank v. First State Bank*, 64 Pac. 634; *Allen et al. v. United States*, 285 F. 678. The using of the trust fund so wrongfully converted, under the evidence, by the bank in enlarging its assets and who had knowledge of the character of the fund, requires the application of the principle that the fund will be treated as trust property in the hands of the bank at the time it suspended business and the claims of the districts here involved are preferred and should be paid as such out of the assets of the bank. Accordingly decree will be entered with costs.

The evidence relating to the claims of the districts in case No. 1787 is similar to the evidence in the case No. 1729, excepting as to amounts and names of some of the banks upon which checks were issued.

(Title of Court and Cause)

ORDER AND JUDGMENT

Filed Jan. 6, 1933.

Be it remembered that heretofore, to-wit, on the 31st day of October, 1932, the above entitled cause came on for trial by the court at the City of Boise, Idaho, at which time the plaintiffs appeared by Sweeley & Sweeley, their attorneys, and the defendant appeared by Frank L. Stephan, his attorney.

Thereupon the respective parties filed and submitted to the court their signed stipulations as to the facts upon which the claims of the respective plaintiffs in suit herein purport to be based, and oral arguments were made by counsel for said parties. At the close of the argument the case was submitted to the Court subject to the right of counsel to present further briefs if they should so desire.

Now on this 29th day of December, 1932, briefs of counsel having been presented and the court having examined the same and being fully advised in the premises finds from the facts established by the pleadings herein and the stipulations of the parties and the law applicable thereto, that the several claims of the respective plaintiffs which have been filed with the receiver of the Twin Falls National Bank, as set forth in the Bill of plaintiffs,

should be allowed and made preferred as prayed by plaintiffs, and by said receiver paid prior to and in preference to the claims of the general creditors of said bank.

It is therefore by the Court ordered, adjudged and decreed that the claims of the several Common School Districts, Nos. 32, 36, 47, 59, and 62, as set up in their Bill herein and as filed with said receiver, be and the same are, each and all, declared to be and are hereby established as preferred, and that the defendant G. D. Thompson, as receiver of said Twin Falls National Bank be and he is now authorized, ordered and directed to allow and treat each and all of said claims as preferred as prayed by the plaintiffs and to make payment thereof out of the assets of said bank in preference and prior to the claims of said general creditors.

It is further ordered and adjudged by the court that the plaintiffs have and recover of and from the defendant G. D. Thompson, receiver, their costs and disbursements of suit herein taxed at \$10.00.

By the Court: Jan. 6th, 1933.

CHARLES C. CAVANAH,
Judge.

(Title of Court and Cause)

STIPULATION

Filed Feb. 22, 1933.

WHEREAS, the above named defendant and appellant has perfected an appeal from a judgment made and entered by the District Court of the United States for the District of Idaho, Southern Division, in cause No. 1729, therein lately pending, wherein the said Common School District No. 54, in the County of Twin Falls, State of Idaho, was plaintiff, and the said G. D. Thompson, as Receiver of the Twin Falls National Bank, Twin Falls, Idaho, was defendant, and said defendant and appellant has likewise perfected an appeal from the judgment made and entered by said District Court in cause No. 1787, lately pending in said District Court, wherein said Common School Districts Nos. 32, 36, 47, 59, and 62, in Twin Falls County, State of Idaho, were plaintiffs, and G. D. Thompson, as Receiver of the Twin Falls National Bank, Twin Falls, Idaho, was defendant, which actions were consolidated by said District Court for trial and involve the same, or substantially the same, facts and legal questions, and it is therefore deemed unnecessary to set out or incorporate in the record on appeal the pleadings, papers or proceedings in more than one of said actions; and

WHEREAS, it will reduce the expense to the litigants and conserve the time of the Circuit Court of Appeals if said causes be consolidated for hearing on appeal upon the same record and briefs;

IT IS, THEREFORE, HEREBY STIPULATED AND AGREED between plaintiffs and defendant, through their respective counsel, as follows:

I. That said causes Nos. 1729 and 1787 shall, with the consent of the Circuit Court of Appeals for the Ninth Circuit, or the presiding judge thereof, be consolidated for the purpose of appeal and for hearing in said Circuit Court of Appeals.

II. That the record and briefs shall contain the consolidated title as used on this stipulation, and that the Clerk may omit the title of pleadings and in lieu thereof insert the words "TITLE OF COURT AND CAUSE" to be followed by the name of the pleading or instrument, and the Clerk may omit the verification of all pleadings and in lieu thereof, wherever the pleading is verified, he shall insert the words "DULY VERIFIED."

III. That it shall be unnecessary to incorporate in the record on appeal in cause No. 1787 any pleadings, papers or documents other than the following:

A. Original Complaint.

B. Answer.

- C. Stipulation, dated October 17, 1932.
- D. Stipulation of Facts, dated October 28, 1932.
- E. Stipulation providing for consolidation of causes in District Court.
- F. Memorandum Opinion of District Court.
- G. Order and Judgment, dated December 29, 1932.
- H. This stipulation.
- I. Any order made by the Circuit Court of Appeals for the Ninth Circuit, or the presiding judge thereof, relative to the consolidation of the causes for hearing on appeal or relating to the record on appeal.
- J. Petition for Appeal.
- K. Order allowing Appeal.
- L. Assignments of Error.
- M. Citation.

IV. That the complaint and answer in cause No. 1729 for all intents and purposes are the same as the complaint and answer in cause No. 1787 and for said reason counsel deem it unnecessary to have the same made a part of the record on appeal or repeated therein, and it is further stipulated that the record on appeal in Cause No. 1787 mentioned in Paragraph III of this Stipulation and included in Subdivisions C to M inclusive shall relate also to the appeal in Cause No. 1729.

V. That if the Circuit Court of Appeals shall, of its own motion, determine that anything made a part of the record in either action not included in the printed record should have been so included for the information or convenience of the Court, or if either party shall hereafter conclude that any additional part of the record whether certified to said Circuit Court of Appeals or not, should be a part of the printed record, the same may be certified to said Circuit Court of Appeals, and, if required, printed as a supplement to the record, as an expense, in the first instance, of the appellant.

VI. That this stipulation is in lieu of the filing of a Praecipe by defendant and appellant.

DATED this 16th day of February, A. D. 1933.

MARLIN J. SWEELEY,
EVERETT M. SWEELEY,
Attorneys for Plaintiffs and
Appellees.

FRANK L. STEPHAN,
J. H. BLANDFORD,
Attorneys for Defendant
and Appellant.

(Title of Court and Cause)

ORDER CONSOLIDATING CASES

Filed Feb. 22, 1933.

Counsel for the respective parties above named having stipulated that an order may be entered consolidating the above cases for the purpose of appeal and for hearing in this Court, and good cause appearing therefor,

IT IS ORDERED:

I. That the case of Common School District No. 54, in the County of Twin Falls, State of Idaho, vs. G. D. Thompson, as Receiver of the Twin Falls National Bank, Twin Falls, Idaho, being case No. 1729, be consolidated with the case of Common School Districts Nos. 32, 36, 47, 59, and 62, in Twin Falls County, State of Idaho, vs. G. D. Thompson, as Receiver of the Twin Falls National Bank, Twin Falls, Idaho, being case No. 1787, for hearing in this Court on the appeals heretofore taken in said causes from the District Court of the United States for the District of Idaho, Southern Division, and said causes may be presented upon the record prepared substantially in accordance with the terms of the stipulation on file herein.

II. That the record and briefs shall contain the consolidated title substantially as on this Order, and it shall be unnecessary to incorporate in the

record on appeal any pleadings, papers or documents other than those specified in the stipulation.

DATED this 18th day of February, A. D. 1933.

CURTIS D. WILBUR,
Presiding Judge, United
States Circuit Court of Ap-
peals for the Ninth Circuit.

(Title of Court and Cause)

PETITION FOR APPEAL

Filed Feb. 15, 1933.

TO THE HONORABLE CHARLES C. CAVANAH,
JUDGE OF THE DISTRICT COURT,
AFORESAID:

The above named defendant as Receiver of said Twin Falls National Bank, feeling himself aggrieved by the Order and Judgment made and entered in this cause on the 29th day of December, A. D. 1932, does hereby appeal from said Order and Judgment to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Error, which is filed herewith, and he prays that his appeal be allowed and that a Citation issue, as provided by law, to the above named plaintiffs, commanding them to appear before the Cir-

cuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and papers upon which said Order and Judgment was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California.

That your petitioner was appointed Receiver of said Twin Falls National Bank pursuant to an Act of the Congress of the United States entitled "An Act Authorizing the Appointment of Receivers of National Banks and for other purposes," approved June 30, 1876, and your petitioner is an officer of the United States and this appeal is prosecuted by him in that official capacity under the direction of the Comptroller of the Currency of the Treasury Department of the United States.

And your Petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

Dated this 10th day of February, A. D. 1933.

FRANK L. STEPHAN,
J. H. BLANDFORD,
Attorneys for Petitioner,
Residence and Post Office
Address, Twin Falls, Idaho.

(Service acknowledged.)

ORDER ALLOWING APPEAL

The foregoing Petition is hereby granted and the appeal of the defendant is allowed, and it satisfactorily appearing that this appeal is prosecuted by direction of a Department of the Government of the United States the Petitioner shall not be required to give bond for appeal.

Dated this 11th day of February, A. D. 1933.

CHARLES C. CAVANAH,
United States District Judge.

(Title of Court and Cause)

ASSIGNMENTS OF ERROR

Filed Feb. 15, 1933.

Now, on this 10th day of February, A. D. 1933, comes the defendant in the above entitled proceedings, by his attorneys, Frank L. Stephan, Esq., and J. H. Blandford, Esq., and says that the Order and Judgment entered in the above cause on the 29th day of December, A. D. 1932, is erroneous and unjust to the defendant for the following reasons:

I.

The Court erred in finding in its Order and Judgment that the claims of plaintiffs should be

allowed and made preferred and paid by the defendant prior and in preference to the claims of general creditors of the Bank:

1. Because no part of the proceeds of the warrants described in plaintiffs' complaint and no part of the proceeds of any draft or check given in payment of said warrants ever came into the possession or custody of the Twin Falls National Bank or the defendant;

2. Because the funds of the Twin Falls National Bank have not been augmented by the proceeds of said warrants or by the proceeds of any check or draft given in payment of said warrants;

3. Because no part of the proceeds of said warrants or any check or draft given in payment thereof is now in the possession or custody of said bank or the defendant;

4. Because the proceeds of said warrants are not traceable to said Twin Falls National Bank or the defendant but are traceable elsewhere;

5. Because whatever claim plaintiffs may have had against Twin Falls National Bank became merged in the Judgments described in plaintiffs' Bill in Equity and by virtue of said Judgments plaintiffs are entitled to share in

the assets of said Bank only as general creditors.

II.

The Court erred in classifying plaintiffs' claims as Preferred Claims, for the reasons set out in Paragraph I of these Assignments of Error.

III.

The Court erred in giving Judgment in favor of plaintiffs and against the defendant and in causing its Order and Judgment dated the 29th day of December, A. D. 1932, to be entered herein for the reasons set out in Paragraph I of these Assignments of Error.

IV.

The Court erred in making and entering its Order and Judgment because said Order and Judgment is not supported by the pleadings and stipulations in the case.

WHEREFORE, The defendant prays that the Order and Judgment of the District Court of the United States for the District of Idaho, Southern Division be reversed for want of equity and for the reasons set forth in this Assignments of Error, and for such other relief as may be proper in the premises.

Dated this 10th day of February, A. D. 1933.

FRANK L. STEPHAN,
J. H. BLANDFORD,
Attorneys for Defendant,
Residence and Post Office
Address, Twin Falls, Idaho.

(Service acknowledged)

(Title of Court and Cause)

CITATION

Filed Feb. 15, 1933.

THE PRESIDENT OF THE UNITED STATES
TO COMMON SCHOOL DISTRICTS NUM-
BERS 32, 36, 47, 59, and 62 IN THE COUNTY
OF TWIN FALLS, STATE OF IDAHO, AND
TO SWEeley AND SWEeley, THEIR
ATTORNEYS, GREETING:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear in the United States Cir-
cuit Court of Appeals for the Ninth Circuit to be
held in the City of San Francisco, State of Cali-
fornia, within thirty days from the date of this
Citation pursuant to an appeal, filed in the office of
the Clerk of the District Court of the United States
for the District of Idaho, Southern Division, where-
in G. D. Thompson, as Receiver of the Twin Falls

National Bank is appellant, and you are appellees, to show cause, if any there be, why the Order and Judgment made and entered against said Appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS The Honorable Charles C. Cavanah, Judge of the District Court of the United States for the District of Idaho, Southern Division, this 11th day of February, A. D. 1933.

CHARLES C. CAVANAH,

Attest: United States District Judge.

W. D. McREYNOLDS,

Clerk of said District Court.

Copy of the foregoing Citation received and service thereof admitted this..... day of Feb., A. D. 1933.

Attorneys for Appellees.

CERTIFICATE OF CLERK

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 137 inclusive, to be full, true, and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit as requested by the Praeceptum filed herein.

I further certify that the cost of the record herein amounts to the sum of \$137.50 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 13th day of March, 1933.

W. D. McREYNOLDS, Clerk.

(SEAL)

